This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

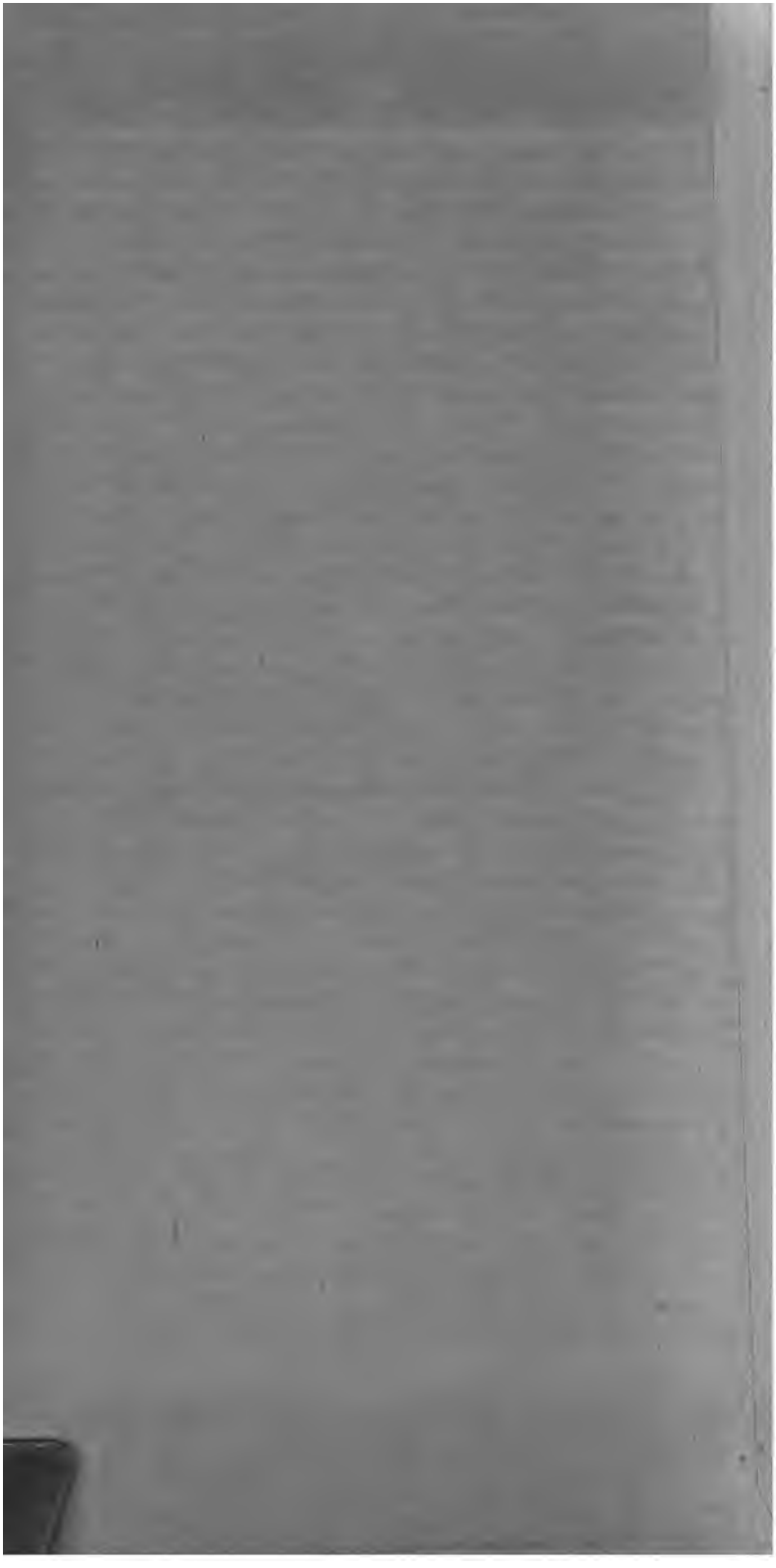
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

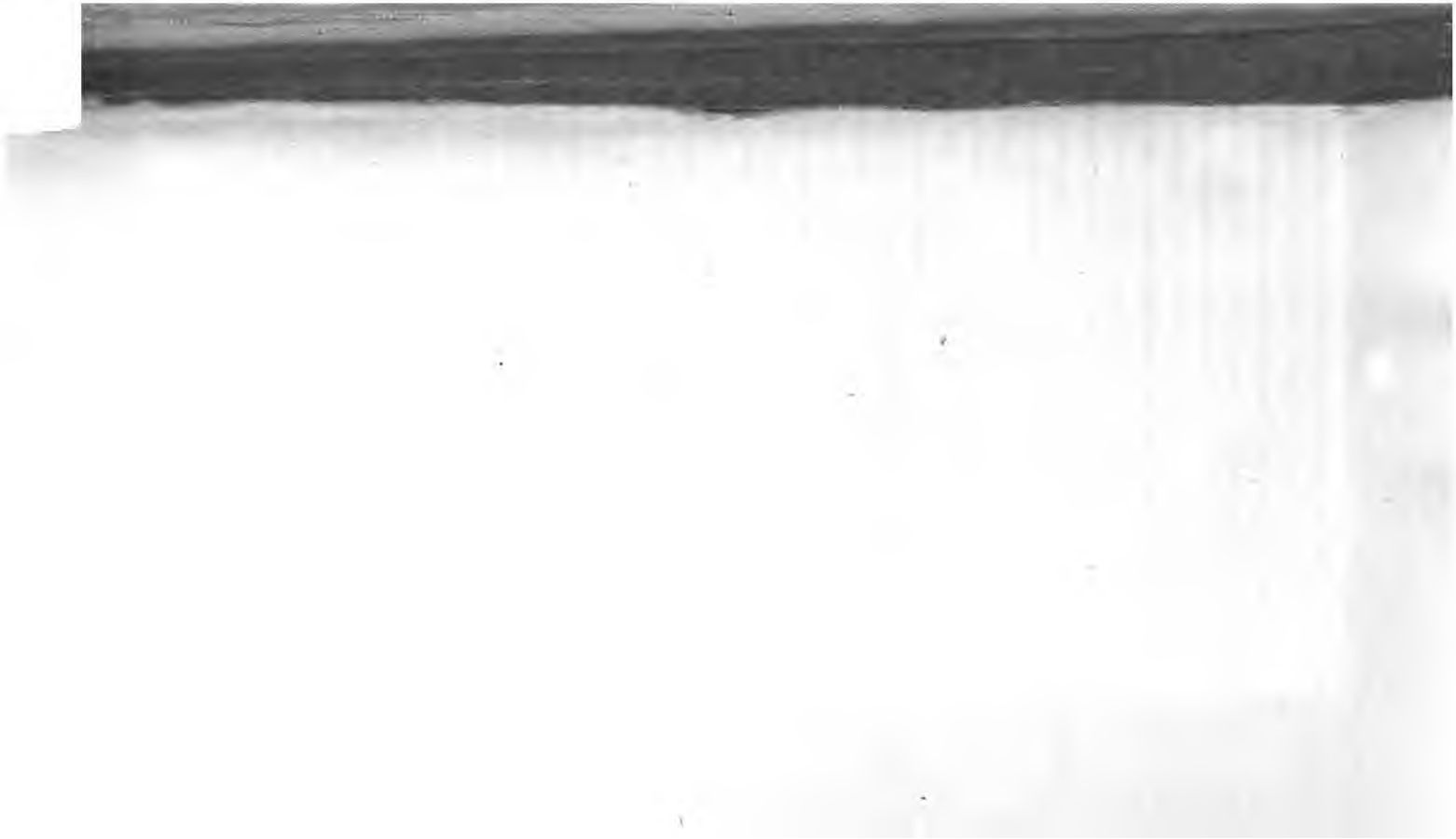
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

3 3433 07594701 4





THE TRIALS

OF

PATRICK MAXWELL STEWART WALLACE,

AND

MICHAEL SHAW STEWART WALLACE,

FOR

WILFULLY DESTROYING

THE BRIG DRYAD,

OFF CUBA,

WITH INTENT TO DEFRAUD THE

Marine Assurance Companies

AND UNDERWRITERS.

LONDON:

PRINTED AND PUBLISHED BY WILLIAMS AND SON,

25, WALBROOK.

1841.

Price Five Shillings.

2.0.49
THE NEW YORK
PUBLIC LIBRARY
582705
ASTOR, LENOX AND
TILDEN FOUNDATIONS.
R 1912 L

NEW YORK
PUBLIC
LIBRARY

CONTENTS.

		Page
Charge of the Recorder of London to the Grand Jury		iii
	PROSECUTION.	
Objections to the Trial of the Indictment		1
The Attorney General's Address on opening the Case against the Prisoner Patrick Maxwell Stewart Wallace		10
Examination of	Mr. George Herring	27
—	Mr. Alexander Howden	28
—	Mr. Samuel Bickley	32
—	Mr. Richard James Shepherd	33
—	Mr. James Gray	34
—	Mr. James Stott	41
—	Mr. Michael Wills	49
—	Mr. Thomas Johnson	51
—	Mr. Robert Selden	53
—	Mr. Henry Hall	53
—	Mr. Henry Stewart	55
—	Mr. Oliver Thomas Lyndall	56
—	Mr. Francis Lewis Philip Secretan	56
—	Mr. Samuel Marshall	57
—	Mr. William Lodge	57
—	Mr. Charles Lewis Bahr	58
—	Mr. J. Frost	59
—	Mr. Peter Kelly	60
—	Mr. Thomas Sherlock	70
—	Captain Alfred John Tait	73
—	Ronald Maxwell	81
—	Benjamin Schultz	104
—	Captain Alfred John Tait (*re-called*)	121
—	Mr. J. Frost (*re-called*)	125
—	John Ice	125
—	Mr. Henry Cotton	127
—	Mr. John Saunders	129
—	Mr. John Kempster	129
—	Mr. William Herbert Mullins	130
—	Mr. Henry Cotton (*re-called*)	130
—	Mr. John Bryant Priestman	131
—	Benjamin Schultz (*re-called*)	132
—	Captain Alfred John Tait (*re-called*)	132

Page

DEFENCE.—Mr. C. Phillips 135
Examination of Mr. William Carpenter 164
SUMMING UP.—Lord Chief Justice Tindal 166
VERDICT 190

PROSECUTION.

Attorney General's Address on Opening the Case against Michael Shaw Stewart Wallace 191
DEFENCE.—Mr. Jervis 206
SUMMING UP.—Lord Chief Justice Tindal 251
VERDICT 288
JUDGMENT of the Court on both Parties 288

Case submitted for the Opinion of the Judges 290
Decision of the Judges thereupon 294

NEW YORK PUBLIC LIBRARY

The Recorder of London,

THE HON. CHARLES EWAN LAW,

In his charge to the Grand Jury, at the March Sessions, 1841, observed, that in this case, he had to call the attention of the Grand Jury to a charge which, doubtless, would come before them affecting a crime alleged to have been committed on the high seas, within the jurisdiction of the Admiralty of England. On being called upon to discharge the office of Grand Jurors in this instance, they would observe it was an office of great extent in point of locality, and of great importance in its operation. He was not aware that any case of equal importance had occurred since that in which four persons of the names of Codling, Reid, M'Farlane, and Easterby were prosecuted so long ago as the year 1802. In that case Codling was charged with wilfully casting away and destroying a ship or vessel of which he was the captain; Reid was charged with being on board aiding and assisting, and the two other parties, who were the owners of the vessel, were charged as accessories before the fact, in having encouraged, counselled, and engaged the captain to commit the crime. In consequence of the acts of the parties so charged as accessories, being acts committed by them not on the high seas, though they had reference to the crime committed by the captain on the high seas, a point was raised in their favor, and after their conviction the point was referred to the consideration of the twelve Judges, at Serjeants' Inn, in November, in the same year. The Judges considered it; and, in consequence of their report, on the 3rd of May, 1803, a free pardon was granted to the accessories, on the ground that the procurement of the destruction of a ship—which offence was committed on the high seas—was not an offence within the jurisdiction of the Admiralty of England, under the statute of 11 George III., chap. 29, sec. 7. This case, however, was of so much commercial importance, as to draw to it the attention of the Legislature, and a bill was passed in

the course of the same year to remedy this defect in the law, and the provisions of that act had since been carried out by another statute, the 7th of George IV., chap. 64, sec. 9. That section provided for the more effectual prosecution of accessories, before the fact, to felony, and it enacted that if "any person shall counsel, procure, or command to commit any felony, the person so counselling, procuring, and commanding, shall be deemed guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felon, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed on the high seas, or at any place on land, whether within His Majesty's dominions or without." This provision enabled the Grand Jury to entertain this case, provided an indictment should be presented to them, alleging and charging the fact of the commission of the principal offence, by the captain, and also alleging that the parties charged as accessories before the fact had counselled, procured, and commanded the captain to cast away or otherwise destroy the vessel. But before the Grand Jury returned a true bill against the parties charged with counselling, &c., they must be satisfied that the vessel was in fact wilfully cast away, and that too by the person whom it was alleged the parties charged had counselled, procured, and commanded so to act. The 1st Victoria, cap. 89, sec. 6, provided for the punishment of this offence, for it enacted that "whosoever shall unlawfully and maliciously set fire to, cast away, or in

any way destroy, any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten any policy of insurance upon such ship or vessel, or on the freight thereof, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years." Previous to the statute, the principal crime was of a capital nature; now, however, by the humanity of the law, the punishment was reduced to transportation or imprisonment, at the discretion of the Court; and the 11th section of the same statute provided, "that in the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by the act punishable." The remaining point to which he (the Recorder) wished to draw attention was to the provision of the 14th section, "that where any felony punishble under the act, shall be committed within the jnrisdiction of the Admiralty of England or Ireland, the same may be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction." Then, by the 22nd section of the 4th and 5th William IV., cap. 36, (the act which gave a new jurisdiction to the Central Criminal Court), any two or more of the commissioners appointed by the commissions to be issued under the authority of the act, may inquire of, hear, and determine any offence or offences committed, or alleged to have been committed on the high seas and other places, within the jurisdiction of the Admiralty of England." The Grand Jury had now before them the full jurisdiction to inquire, and although the captain of the vessel was not amenable to justice so as to be put upon his trial here, still if they had evidence adduced before them that in point of fact the ship was cast away by the procurement of other parties, who were alleged to be the

owners of part of the cargo, or of the ship in question, with the intention to prejudice and defraud the underwriters, it appeared to him (the Recorder) that it would be their duty to put the parties in the course of trial before a Petty Jury. He did not think he could better conclude these observations than by employing the language addressed by Sir William Scott, afterwards Lord Stowell, to the Grand Jury on the trial of Codling and others, to which he had already referred. The remarks then made by that learned individual were these :—

"One peculiar case will call for the most diligent application of your powers of inquiry—the offence of sinking a ship and cargo, with intent to defraud the underwriters. To you, who are commercial men, it is unnecessary to say much on its malignity; it strikes at the root of the maritime commerce, and consequently of the power and security of this country, so intimately connected with the prosperity of its maritime commerce. It is owing to the property of that class of men, the insurers, who, by dividing the risk, increase the security of private individuals, and give the benefit of large capitals to the adventurer of slender means, that our commerce has triumphed in its activity over all competition. But it is property that peculiarly requires the protecting vigilance of the law; for it is property out of the possession of those to whom it belongs, and in the possession of those for whose benefit it is indeed employed, but who may have a corrupt interest in its destruction. The law is its protection; you will, therefore, grudge no time or labour in prosecuting your inquiry into the truth of such a charge if it occurs; but you will conduct your inquiry with minds perfectly free from prejudice against the individuals charged; nothing that you may have heard, nothing that you may have read, must be suffered to mix itself with, and give a color to, your judgment; you must begin and close your inquiry with ears and eyes shut to everything but the evidence now to be adduced."

principal first pleads not guilty; and if the accessory chooses to take his trial with him, he pleads not guilty, and the question of the guilt of the accessory cannot be submitted to the jury, until they find the guilt of the principal; or in the new form of indictment, a mode of proceeding is suggested, namely an indictment for a substantive felony.

Now, my Lord, the only way in which you can at all ascertain how the parties are proceeding, is by reference to the form of the indictment, because the course taken under the statute must influence the mode of proceeding at the trial with respect to the admissibility of evidence, because if the principal is to be the subject of the charge, much might be admissible to prove the guilt of the principal, which would not be relevant or admissible against the accessory, and indirectly that which was admissible against the principal, might be used to the prejudice of the accessory. You can only ascertain from the form of the indictment, how the party chooses to proceed. Here the indictment is, in the common law form, against Loose as principal (not alleging any circumstance why he may not come in and plead), and against Wallace as accessory before the fact.

Now, my Lord, I do not know whether it is necessary that we should put a construction upon the meaning of the words, "substantive felony," which was a matter much argued in Caspar's case. The meaning of the term, "substantive felony," is very difficult to be understood, and possibly when it becomes necessary to put a construction upon those words, it may turn out to be nothing more than a misdemeanour—a counselling to do that which, at common law, was a misdemeanour—a counselling to commit a felony. But the true test I apprehend to be this—a substantive felony is that which is to stand by itself against the accessory, independent of any charge against the principal; and although the guilt of the principal must be considered, because the accessory can only be guilty after the principal's guilt has been determined, yet I take it, the true test of ascertaining whether the accessory is bound to take his trial at once is this, whether the indictment is in such a form, as that the principal may come in and say, "I will plead to it." Now, my Lord, if he may come in and say, he will plead to the indictment, I apprehend that then the accessory has a right to say, "Until that is the case, I will not be tried."

Now, of course your Lordship is aware (it cannot affect the case one way or the other in point of legal construction), that Loose, the captain, is dead.

Lord Chief Justice Tindal. I was not aware of that.

Mr. Jervis. It cannot affect the construction of the statute, if I am right in saying that the course to be taken is to look to the indictment; because if it be true, as it is, that Loose cannot in this case be made the subject of the indictment, then if they are bound to proceed as for a substantive felony, it must be alone and singly against the accessory, so that the principal cannot come in. They must make it a single charge only—a charge against the accessory. In this case, your Lordship will see, upon looking at the abstract of the indictment, that it is in the old form against the accessory. It seems to me, that if the indictment is to be the means of construction, they have elected the proceeding which is first given by the statute, to indict the accessory with the principal; and if so, all the common law rights of the accessory will attach, namely, that he is not bound to plead until the principal has been convicted; or if he do plead, judgment cannot be passed upon him, until the principal comes in, and has been convicted. If so, he is at liberty to say, "I will not plead until that matter is determined against the principal." I do not say what might be the case, if they could frame an indictment for a substantive felony, in which the accessory is substantively charged without the principal.

Lord Chief Justice Tindal. This is in the ordinary common law form, under which the principal may come in and plead.

The Attorney-General. It is the form, my Lord, which, as I understand, has been observed, ever since the act of Parliament passed to which my friend has referred. That act of Parliament is the 7th Geo. IV., cap. 64, section 9.

Now, my Lord, it will first be material that your Lordship should have brought to your notice the act of Parliament upon which this indictment is framed. It is the act of 7th William IV., and 1st Victoria, cap. 89, sect. 6., by which it is enacted, "That any person who shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner, or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten, or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of the natural life of such offender, or for any term, not less than fifteen years, or to be imprisoned for any term not exceeding three years."

Then, my Lord, by section 11 of the same act of Parliament, it is enacted, "That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable. And every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years." That removes a defect that there was in the law which occurred in Codling's case, where the accessories being convicted, it was held that their case did not come within the act of Parliament upon which the indictment was framed. Now, my Lord, all difficulty as to the accessory is removed by that express enactment.

Lord Chief Justice Tindal. It only goes to the measure of punishment.

The Attorney General. Yes, my Lord, only to the measure of punishment, and they are to be considered as being guilty of the felony in the same manner as the principals are. I now refer your Lordship to the 9th Section of the act of 7th Geo. IV. cap. 64, which is "and for the more effectual prosecution of accessories before the fact to felony, be it enacted that if any person shall counsel, procure, or command any other person to commit any felony whether the same be a felony at common law or by virtue of any Statute or Statutes made or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted or convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice, and may be punished in the same manner as an accessory before the fact to the same felony, if convicted as an accessory, may be punished. And the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be enquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high Seas or at any place on land, whether within His Majesty's dominions or without, and that in case the principal felony shall

have been committed within the body of any County, and the offence of counselling, procuring, or commanding, shall have been committed within the body of any other County, the last mentioned offence may be enquired of, tried, determined and punished in either of such Counties, provided always that no person who shall once be duly tried for any such offence, whether as an accessory before the fact or as for a substantive felony, shall be liable again to be indicted or tried for the same offence." Now, my Lord, under this Act of Parliament, it is quite clear that this prisoner might be indicted, might be tried, might be convicted, without the trial or the conviction of the principal; and my learned Friend's sole objection is as to the form of the indictment. He says that this is not a proper form of indictment upon which they can be tried without the principal. That, if I understand it, is my Friend's objection, which he stated to your Lordships before I came into Court.

Lord Chief Justice Tindal. His objection is that you have included both the principal and the accessories in the same indictment; and therefore it is an indictment at common law, as it was before this statute, and not an indictment for a substantive offence.

The Attorney General. Now, my Lord, if your Lordship should consider the parties in the same situation as if they had not pleaded, if you should give them leave to withdraw their plea (and I do not seek to take any advantage of their having pleaded)—

Lord Chief Justice Tindal. No, the plea is taken for the convenience of the court.

The Attorney General. I assume that your Lordships would at once say, that they should be in the same situation as if they were now called upon on their arraignment.

Lord Chief Justice Tindal. Yes; as if they were now called on upon their arraignment.

The Attorney General. They are now in the same situation as if, being arraigned upon this indictment, they were asked, Guilty or Not Guilty? The question is, Whether, in the absence of the principal (the principal not being as yet convicted), they are not bound to plead. What course is to be adopted? My Lord, I apprehend that they must either say, Guilty or Not Guilty. Here is an indictment against them. It would come rather to be matter of quibble than of pleading.

Lord Chief Justice Tindal. It would be rather matter for putting off the trial till Loose is found.

The Attorney General. It shapes itself into that, my Lord.

Lord Chief Justice Tindal. Non constat, the man may be found.

The Attorney General. But it takes the form, properly speaking, and legally considered, of an application to your Lordships to put off the trial until Captain Loose shall be found. The objection is, not that they are not bound to plead, for they must plead; and, if they do plead, I apprehend that they may then clearly be tried upon this indictment. What ground therefore is laid for putting off the trial? My friend, Mr. Jervis, tells your Lordships that Captain Loose is dead. To what time are you to put off the trial? My Lord, I utterly deny that at common law the accessories might not be tried in the absence of the principal. You must prove the principal to be guilty. You must prove the *corpus delicti*—that I admit. My Lord, it was with a view to that that the 7th and 8th Geo. IV. seems to have been passed. But, at common law, suppose A were charged as a principal felon, and suppose B and C were charged as accessories before the fact of the felony, and A had died after the bill of indictment was found, and before the trial—shall I be told that it would be impossible to proceed against C? You must prove A to be guilty—you must prove the *corpus delicti*—you must establish the offence charged against the principal; but that being done, you may go on to prove that B and C were accessories before the fact. My Lord, I will for a moment suppose that we do not seek to avail ourselves of this Act of Parliament; how would it be at common law independent of the statute altogether? Does my learned friend say that at common law you cannot include the principal and the accessories in one indictment, and that you cannot try the accessories until there has been a conviction of the principal?

Mr. Jervis. I say that; and I have authority for it.

The Attorney General. You must prove the *corpus delicti* no doubt.

Lord Chief Justice Tindal. In what condition would you be if you do not prove it?

The Attorney General. In that case, my Lord, they would all be acquitted; because anything to shew that A, the principal, is not guilty, is demonstration to shew that B and C, the accessories, cannot be guilty.

Lord Chief Justice Tindal. You know it might very well so happen that a principal might be acquitted, and an accessory be found guilty; if you try them separately, for more evidence might be brought against one than against the other.

The Attorney General. But I am putting the case of the principal and the accessories being tried upon the same indictment.

Lord Chief Justice Tindal. Does not Lord Hale say that the accessory may have the option not to be tried till after the conviction of the principal.

Mr. Jervis. Yes, my Lord; in 1st Hale's Pleas of the Crown.

Mr. Justice Bosanquet. The accessory is not to be tried unless by his own consent.

Mr. Jervis. Yes, my Lord. It is said that the accessory shall not be constrained to take his trial until the principal be tried. That is in the Year Books.

Lord Chief Justice Tindal. The reason of the thing is, that there might be a conviction against the accessory, and afterwards the principal might be acquitted.

The Attorney General. Then that being the opinion of your Lordships with regard to the common law, we will see whether the statute does not afford an effectual remedy. I thought it my duty to try it both ways. Now upon the statute it will appear, that this is to be considered a substantive felony within the meaning of the Act of Parliament; and I know not how it was possible to frame an indictment against the accessories except in the form here adopted. Now the Act of Parliament says "that if any person shall counsel, procure, or command, any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding shall be deemed guilty of felony." A person therefore counselling the commission of a felony is himself a felon, "and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as an accessory before the fact, to the same felony, and, if convicted as an accessory may be punished." Therefore, whether the principal be convicted or not convicted, the accessory may be tried. Now he may be tried in this manner, or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted. My Lord, is not this an indictment for a substantive felony? Is it not enough that any indictment shows facts from which guilt by law is to be inferred? Your Lordship sees that

by this Act of Parliament any person who is accessory to a felony is guilty of a felony. Then all we have to shew in order to prove that the prisoner has been guilty of a substantive felony is, to shew that he has been guilty of being an accessory to the commission of a felony. Do we not shew that in the most distinct manner, by charging here that Captain Loose, being counselled by the prisoner, committed the felony with intent to defraud the underwriters, or the owners of the ship, or the underwriters of the policies upon the ship, or upon the goods? That is charged—I will look to the indictment. Now, bearing in mind that the 9th section of this Act of Parliament makes a person who is accessory to a felony guilty of a substantive offence, what we have to shew is, that the person is here charged with having committed a felony. I did not hear what my friend Mr. Jervis said before I came into court: he may have suggested some other mode in which the indictment might have been drawn; but I know of no other mode. The Act of Parliament says, "that if any person shall counsel, procure, or command any other person to commit any felony, he shall himself be deemed guilty of felony. Very well, he is guilty of felony therefore; and he may be indicted and convicted of a substantive felony. Does not that mean merely that he may be indicted and tried in the absence of the principal? The very object of the Act of Parliament was to meet that difficulty.

Lord Chief Justice Tindal. Was not the object to meet the case of the death of the party, so that he could not be amenable to justice?

The Attorney General. What I have to do is to shew to your Lordship that this indictment does shew, in the most distinct manner, that the prisoners have been guilty of a substantive felony; because, being accessories before the fact, makes them guilty of a substantive felony. Now the indictment alleges that Edmund Loose, with force and arms, being the master of a certain vessel called the Dryad, the property of Alexander Howden and others, on a certain voyage on the high seas, then and there being, did feloniously cast away and destroy the said ship, with intent thereby to prejudice Alexander Howden and others; and the jurors, on their oath, do further present, that Patrick Wallace, at such a place and at such a time, did feloniously procure and counsel the said Edmund Loose, the said felony to do and commit, against the form of the statute in such case made and provided, and against the peace of our Lady the

Queen. And then there is the same charge against Michael. Now, my Lord, does not this shew most distinctly—(Their Lordships consulted).

Lord Chief Justice Tindal. We are not disposed at present to give any opinion upon the subject; but it shall be left open to you, Mr. Jervis, if you think it advisable. We think it right to go on with the case now.

The Attorney General. I think it will turn out, my Lord, that this point was considered in Caspar's case.

Lord Chief Justice Tindal. It came very near it.

Mr. Jervis. Then I understand, my Lord, that, for the purposes of this day, your Lordship decides that this is an indictment for a substantive felony?

Lord Chief Justice Tindal. Yes.

Mr. Jervis. Then, my Lord, I should sever in my challenges. The indictment makes each a separate offence, and the prisoners must be tried separately. My friends therefore will make their election which case they will proceed upon in the first instance.

The Attorney General. Then I will proceed against Patrick, my Lord.

Mr. Jervis. Perhaps your Lordship will allow Michael Wallace to retire?

The Attorney General. I have no objection to that; and his counsel may retire too.

Lord Chief Justice Tindal. If they want him for any purpose of identification, he may come forth.

CASE AGAINST THE PRISONER, PATRICK MAXWELL STEWART WALLACE.

March 3rd, 1841.

The Attorney-General. May it please your Lordship—Gentlemen of the Jury, this is a case that will require your most serious consideration. The prisoner at the bar, Patrick Wallace, is charged with an offence, which I am glad to think is no longer capital, but it is one of a very deep dye. It is alleged against him that he was concerned in a scheme—I state the substance of the charge—for fraudulently effecting insurances upon a

ship and goods, and upon the freight of that ship, and of wilfully casting her away, for the purpose of defrauding the underwriters.

Gentlemen, as I have before said, this formerly was a capital offence. *Now* it is only one which subjects the party to transportation, or imprisonment. The law upon the subject is regulated by an act of Parliament that was passed in the first year of the reign of her present Majesty, by which it is enacted, "That whosoever shall unlawfully and maliciously set fire to, cast away, or in any way destroy any ship, or vessel, with intent thereby to prejudice any owner, or part owner of such ship or vessel, whether the same be complete, or in an unfinished state; or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, with intent thereby to prejudice any owner, or part owner of such ship or vessel, or of any goods on board the same; or any person that hath underwritten, or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years." And then, by another section of the act of Parliament, it is provided, "That in case of any felony punishable under the act, every accessory before the act is punishable in the same manner as the principal in the first degree is punishable." Patrick Wallace is charged as being an accessory before the fact; therefore, if he were convicted, he would be liable to be transported for life, or any measure of punishment short of that, according to the discretion of the court before whom he is tried.

Now, Gentlemen, I need not point out to you how important it is, that if an offence of this sort has been committed, the offenders should be brought to justice. The nature of the offence I cannot better describe to you, than in the words of a very great and eloquent judge, who presided where my Lord now is —I mean Lord Stowell—on a similar occasion. Lord Stowell, then the Judge of the Admiralty, in charging the Grand Jury when an offence of this sort was to be brought before them, makes use of these expressions:—"One peculiar case will call for the most diligent application of your powers of inquiry, the offence of sinking a ship and cargo, with intent to defraud the underwriters. To you, who are commercial men, it is unnecessary

to say much on its malignity. It strikes at the root of the maritime commerce, and consequently of the power and security of this country, so intimately connected with the prosperity of its maritime commerce. It is owing to the property of that class of men, the insurers, who by dividing the risk, increase the security of private individuals, and give the benefit of large capital to the adventurer of slender means, that our commerce has triumphed in its activity over all competition." Gentlemen, I need not remind you of the danger to life and property which such an offence creates—I need not remind you of its demoralizing effects, of the system of fraud and deception which it introduces, and which would entirely undermine the principles upon which the commerce of this country is conducted.

Gentlemen, I will state to you, very shortly I hope, an outline of the facts which will be laid before you, and upon which you will have to determine upon the guilt or innocence of the prisoner. I would caution you to dismiss from your recollection anything you may have heard or read upon the subject, and to be guided entirely by the evidence brought before you. My statement is not at all to be regarded except in as far as it is fully to be substantiated by the witnesses and proofs which will be produced to you. I offer you this statement only that you may understand the bearing of the evidence which is afterwards to be adduced.

Gentlemen, Patrick Wallace resided at No. 40, Windsor Terrace, in the City Road. He carried on business, not there, but at 18, Cooper's Row, Crutched Friars. He was an importer of bristles and other Russian produce. He likewise dealt in ale and in porter. Although Michael, his brother, is not now upon his trial, and nothing that takes place upon this trial can at all affect the fate of Michael, as they were joined in one enterprise it is indispensably necessary for the ends of justice that I should state to you who Michael is, and the share that he had in this enterprise.

Gentlemen, Michael lived in a house in Tredegar Square, by the Mile End Road, and he had a place of business likewise—the same place of business as his brother's, at 18, Cooper's Row, Crutched Friars. He was a ship-owner, and amongst other ships he had a share in a ship called the Dryad. He had three-fourths of that ship—a brig of 204 tons burden. The other fourth belonged to Howden and Ainslie. He himself, I believe, had mortgaged his three-fourths to a sister of his of the name of Janet.

Gentlemen, it was in the summer of the year 1839 that Patrick

and Michael appear to have engaged in this unlawful enterprise. Gentlemen, the brig Dryad, on the 25th of July, 1839, was chartered to a mercantile house carrying on business under the firm of Zuluetta and Co. I believe they had a place of business in London, but they had likewise an establishment at Liverpool, and the ship, at the time of the charter, was lying at Liverpool.

Gentlemen, the terms of that charter are extremely material, and I will state the substance of it to you now. You will find that by this charter, the whole stowage of the ship, the Dryad, was chartered to Zuluetta and Co., for a voyage from Liverpool to Santa Cruz, in the island of Cuba, for a freight of 300*l.*, 200*l.* to be paid before the ship sailed, and the remaining 100*l.* to be paid after the delivery of the cargo. Gentlemen, that charter is so material, that I must state to you the substance of it. "London, 25th July, 1839. It is this day mutually agreed between Mr. M. S. Wallace, owner, &c., of the ship or vessel called the Dryad, A. 1, and coppered; Loose, Master; of the measurement of 204 tons or thereabouts, now lying at Liverpool, and Messrs. Zuluetta and Co., of London, Merchants, That the said ship being tight, staunch and strong, and every way fitted for the voyage, shall, with all convenient speed, there load from the factors of the said merchant, a full and complete cargo of merchandize, no part of which merchandize must be too bulky to be admitted down the ship's hatchways, which are of the ordinary size for vessels of 204 tons register, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions and furniture, and being so loaded shall therewith proceed to Santa Cruz, in the island of Cuba, or so near thereunto as she may safely get, and deliver the same, on being paid freight as follows:—viz., a lump sum of 300*l.*—the cargo to be landed by the ship's boats and crew assisting, for which, if done to the satisfaction of the consignee, the ship to be allowed 25*l.* In full of all, port-charges and pilotage as customary (the act of God, the queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever during the said voyage always excepted), 200*l.* of the freight to be paid in cash on clearance at the Custom House, Liverpool, and residue by approved Bill on London at one month's sight after right delivery of the cargo at Santa Cruz, deducting therefrom the advances for ship's disbursements not exceeding 70*l.*" Thus you see, Gentlemen, the whole stowage of this ship was hired to Zuluetta and Company. They, and

they alone, had the right to load any goods on board of her on this voyage from Liverpool to Santa Cruz.

Gentlemen, I will now proceed to state to you the assurances that were effected upon this adventure. I told you that Howden and Ainslie were the owners of one-fourth. By the direction of Michael Wallace, they effected an insurance which, by itself, would have been perfectly legitimate. They effected an insurance for 2000*l.* upon the ship. Gentlemen, that was done with the privity of Michael; and a sum of 1735*l.*, being Michael's proportion of that, was afterwards paid to him in the year 1840, when a total loss was claimed. There was another insurance of 300*l.* upon the freight, which was likewise effected by Howden and Ainslie at the request of Michael. Upon that a total loss was paid, and although the freight in hazard at the time of the supposed loss was only 100*l.*, still, as far as that goes, I should not say that that ought to excite suspicion. The sum of 300*l.* was to be paid for the freight. I believe that this was an insurance out and home, and therefore I should attach no importance whatever to either of these insurances.

But then, Gentlemen, come two insurances most undoubtedly fraudulent. These were ordered by Patrick to be effected on goods on board the Dryad from Liverpool to Santa Cruz—he having no goods—contemplating the shipment of no goods—and, as it seems to me, Gentlemen, only having in view that the ship should be lost, and that a false claim should be made upon the Underwriters.

Gentlemen, the first Policy of this description that I shall mention to you was for the sum of 715*l.* He ordered that to be effected in the name of Michael. It bears date the 24th day of August, 1839. It is in the name of Michael. "Be it known that Mr. M. S. Wallace, as well in his own name as for or in the name or names of all and every person or persons to whom the same doth, may, or shall appertain in part or in all, doth make assurance and cause himself and them and every of them to be assured, lost or not lost, at and from Liverpool to Santa Cruz, in Cuba." This, upon the face of it, is declared to be upon six cases of flannels, each 40 pieces—240 pieces at 45*s.*, 540*l.* Then upon two cases of cloth, each 10 pieces, and each 15 yards —150 yards at 12*s.*, 90*l.* Two cases of printed cottons, each 50 pieces—100 pieces at 17*s.*, 85*l.*: and the whole is valued at 715*l.* This, Gentlemen, was effected by the Alliance Insurance Company.

Gentlemen, there was a pretended Bill of lading of these goods which was signed by Edward Loose, the captain. Now according to this proceeding, it was indispensably necessary that I should make out that Captain Loose was guilty of the offence charged against him, and one material fact upon which I found this charge is, that he signed Bills of lading for goods that were not on board the ship.

Mr. C. Phillips. My Lord, in this stage of the proceedings perhaps it would be right to take your Lordship's opinion at once upon what appears to me, and will, no doubt, appear to your Lordship, a very material point throughout the Trial, and it is, as we are now standing here indicted for a substantive felony, whether any act of Captain Loose's, or declaration of Captain Loose's, in the absence of the prisoner, can be adduced for the purpose of bearing against him. If Captain Loose were on his Trial here, I admit, my Lord, that any thing he said would have been given in evidence fairly and righteously against himself, and your Lordship, no doubt, would feel it your duty to warn the Jury against attributiug any weight to the observations or acts of Captain Loose as against anybody but himself: that is, if he were on his Trial here to-day. He is not on his Trial here to-day, and for what purpose, except the purposes of prejudice, can either the acts or conversations of Captain Loose in the absence of the prisoner be given in evidence? My Lord, there is a case which appears to me a very strong case upon this point.

Lord Chief Justice Tindal. That is simply the case of an admission—that you cannot give the admission of the principal of his guilt against the accessory, but surely you must prove by all legitimate evidence that the offence has been committed.

Mr. C. Phillips. I know perfectly well, my Lord, from having read these depositions, what my friend is proceeding to do. Of course an *act* I cannot object to, but the conversations of Captain Loose, in the absence of the prisoner, I hope will be shut out.

Lord Chief Justice Tindal. When we come to them will be the time to object.

Mr. C. Phillips. All the mischief may be done, my Lord, if I allow them to be opened without taking your Lordship's opinion on the subject. I am sure the Attorney General will not open them without an intimation from your Lordship whether they are evidence or not.

The Attorney General. My friend's interposition is quite out of place, but I do not complain of it. I was now proceeding

to state the Bill of lading signed by the captain, but I have no objection, at any stage of the proceedings, now or hereafter, to take your Lordship's opinion, whether as part of the *res gestæ*, I am not at liberty to shew what Captain Loose said on the voyage, and down to the time when the transaction was completed. My Lord, it is impossible for me to establish his guilt, which I am bound to do, without shewing what he did and said. An independent admission of his, at a subsequent time, I should not think of offering in evidence; but what he said till the crime was consummated, I contend I am perfectly at liberty to give.

Lord Chief Justice Tindal. No doubt you have a right to such words as the law would say were equivalent to acts—that is, words accompanying acts. You have a right to words which accompany some act as part of the *res gestæ*.

The Attorney General. I fully forgive the anxiety of my friend, Mr. Phillips. We all in our turn do the best that we can for the individual whose case is committed to our care; and I shall most anxiously abstain from any statement which I do not believe to be perfectly fair and legitimate. I have a most thorough conviction that this is evidence, and strong and cogent, and I must say almost conclusive evidence to shew the guilt of Captain Loose; for here we have him signing Bills of lading—pretending he has received goods on board the Dryad, which goods never were shipped; and for what purpose, Gentlemen, could he sign these false documents, except, knowing full well that Insurances were effected on these goods supposed to be so loaded, with the intention of afterwards casting away the vessel?

Gentlemen, the Bill of lading, to which I now refer, professes that these goods were loaded on board.—"Shipped in good order and condition by Mr. M. S. Wallace in and upon the good ship or vessel called the Dryad, whereof E. Loose is Master for this present voyage, and now lying in the port of Liverpool, and bound to Santa Cruz in Cuba, viz." Then there are "Six cases of flannel, each containing 40 pieces" (these are the same as are mentioned in the Policy); "two cases of cloth, each containing 10 pieces; and two cases of prints, each containing 50 pieces; being marked and numbered as per margin." This Bill of lading is dated 20th of August, 1839.

Gentlemen, I will state to you the conclusion of that Policy. It was effected through a broker of the name of Stott. I think early in the year 1840, Stott came to the Alliance, with whom it was effected, and claimed a total loss. He at first had a certain

sum—I believe 80 per cent. on account; and then there was some rumour that part of the goods had been saved, upon which he was required to obtain an undertaking that if any of the goods were saved, they should be accounted for, for the benefit of the Alliance; and, Gentlemen, upon that occasion there was a document produced, which will be given in evidence, and which it will be very material for you to bear in mind; for it professed to be signed by Michael Wallace, though in point of fact it is in the handwriting of Patrick, and it is in these words: —"Gentlemen, in consideration of your settling a total loss on my goods per the brig Dryad, Loose, wrecked at Santa Cruz, I hereby agree, in case of any of the said goods being saved, to indemnify you to the amount of whatever they sell for, less charges.—I am, gentlemen, your obedient servant, M. S. WALLACE." That is signed by Patrick, in the name of Michael; upon that there was a total loss paid, which was handed over to Patrick.

The next policy that I have to mention to you was likewise on goods to the amount of 1,264*l.* by an insurance office called the General Maritime. That likewise was ordered by Patrick through Stott. It is effected in the name of Stott. It is dated, 7th August, 1839. It is on goods that are specified in the body of the policy, and those goods are said to consist of 39 tierces of beef, 32 barrels of pork, 38 firkins of butter, 35 crates of earthenware, 7 cases of cotton prints, each containing 50 pieces, and 5 bales of blankets, the whole being valued at 1,264*l.* 12*s.* Gentlemen, no part of these goods ever were loaded on board the Dryad; but the captain signed another false bill of lading, by which he professed to have received these goods:—"Shipped, in good order and condition, by Mr. P. M. S. Wallace, in or upon the good ship or vessel called the Dryad, whereof E. Loose is master for this present voyage, and now lying in the port of Liverpool, and bound for Santa Cruz, in Cuba—thirty-nine tierces of beef, fifty-two barrels of pork, thirty-eight firkins of butter, thirty-five crates of earthenware, seven cases of cotton prints, five bales of blankets." Now, Gentlemen, it is most certain that this is a false bill of lading, for no such goods were ever loaded. There was a total loss claimed upon that policy by Stott, on behalf of Patrick. And again an undertaking was required by the General Maritime Insurance Office, that if any of the goods were saved they should be accounted for at the insurance office. Accordingly, on the 9th October, 1840, this undertaking was given by Patrick Wal-

lace, the prisoner at the bar :—" Gentlemen, in consideration of your paying to my agent, Mr. Stott, the balance due on my policy per ship Dryad, lost in November last year, I engage to pay over to you the net proceeds of any portion of the goods insured by you which may be saved, immediately on recovering the same."—And, upon that undertaking being given, a total loss upon the 1,264*l.* 12*s.* was paid to his agent and handed over to him.

I now come, Gentlemen, to certain insurances that were effected in the Neptune Office. The first of these was for a sum of 700*l.* on ship and outfit, ordered by Michael Wallace, through some brokers, whose names were Selden and Johnson. Now, Gentlemen, this I must charge as being an over insurance ; because the 2,000*l.* that I have already mentioned was enough to cover the ship ; and here you have another insurance of 700*l.* on ship and outfit. A total loss was claimed upon that policy, and was paid to Michael Wallace.

Then, Gentlemen, there was another policy in the Neptune Insurance Office, which was likewise ordered by Michael, and through the same brokers, Selden and Johnson. That was for the sum of 700*l.* on freights. Upon that, likewise, a total loss was claimed and paid.

Then there was a third policy effected in the Neptune Insurance Office. That was on goods, which goods never were loaded. It was ordered by Patrick, for the sum of 687*l.*, through insurance brokers, named Lyndall and Hall. Now that policy is material, because again you will find the goods are specified upon the face of it. It bears date, the 22nd August, 1839. It is in the names of Lyndall and Hall, the brokers, by whom it was effected, on the order of Patrick ; it is from Liverpool to Santa Cruz, and it specifies the goods upon which that policy was effected :—30 tierces of beef, 43 barrels of pork, 35 firkins of butter, and 50 crates of earthenware. Gentlemen, there never were any such goods on board.

But, Gentlemen, there is likewise a fraudulent and false bill of lading, signed by the captain, in respect of this policy, which is in the names of Patrick and Michael, both. Captain Loose signed this bill of lading in respect of that policy :—" Shipped, in good order and condition, by Messrs. P. and M. Wallace, in and upon the good ship or vessel called the Dryad, whereof E. Loose is the master for this present voyage, and now lying in the port of Liverpool, and bound for Santa Cruz, in Cuba."

Then there are :—30 tierces of beef, 43 barrels of pork, 35 firkins of butter, and 50 crates of earthenware. These the captain said he had received at Liverpool, and was to deliver safe at Santa Cruz.

Gentlemen, a total loss was claimed upon these goods, which were supposed to be the joint property of Patrick and Michael. An undertaking in respect of them was demanded by the Neptune Insurance Office—that undertaking was given; indeed, there were two undertakings given—one in the name of Michael and Patrick, and the other in the name of Michael alone. The first is dated the 5th of February, 1840, and is in these terms :—"In consideration of your settling a total loss on policy per Dryad, Captain Loose, wrecked at Santa Cruz, I hereby agree, in case any of the goods on the said policy shall be saved, to indemnify you to the amount of whatever such goods may sell for, less all charges." That is signed, "M. and P. Wallace." The other undertaking is in these words :—"5th February, 1840. Gentlemen, in consideration of your settling a total loss on policy per ship Dryad, Captain Loose, wrecked at Santa Cruz, I hereby agree, in case any of the materials and stores of the above ship be saved, to indemnify you to the amount they may sell for, less all charges." This is signed by Michael in respect of the policy on the ship, and then there is the signature of both in respect of the policy on the goods, which are alleged to have been the joint property of Patrick and Michael. Gentlemen, upon these undertakings, a total loss was paid, both upon the ship and upon the goods; which goods, in point of fact, were never put on board.

Gentlemen, there was likewise another policy effected in the Indemnity Insurance Office, which was ordered by Michael for 600*l.* upon the freight :—a total loss was claimed upon that policy, and was paid on 30th January, 1840.

There was still another policy effected by Michael upon the ship. He was at Liverpool; he was superintending the outfit of the ship, and there he effected another policy with the Ocean upon the ship, to the amount of 500*l.* Upon that likewise a total loss has been paid.

Now, Gentlemen, how do the insurances stand? We have insurances to the amount of 2,666*l.* on goods that were never put on board. Then, Gentlemen, the policies upon the ship and freight besides, were 700*l.*, 700*l.*, 600*l.*, and 500*l.*; making together, 2,500*l.* upon ship and freight. That would be 5,116*l.* altogether. Now, Gentlemen, there may be a variety of opinions respecting

the value of a ship and freight. I believe it will turn out that these are greatly overvalued; but with regard to goods not shipped, no variety of opinion can possibly exist.

Now, Gentlemen, the ship, I told you, was lying at Liverpool; she had been freighted by Zuluetta and Co. Zuluetta and Co. had the whole stowage of her. They loaded goods on board her, which they very properly insured to the amount of 3,000*l.*; but no goods were shipped except by Zuluetta and Co. I will call their clerk, who superintended the shipping, who will tell you that no goods were put on board before the ship sailed except by Zuluetta and Co.; and that at the time the ship sailed she was not more than two-thirds full. Gentlemen, I will do more. I will give in evidence the declaration of Captain Loose himself—an act that he did as captain of the ship; because I have got a declaration that he made as to the goods he had on board. By an Act of Parliament, passed in the 3rd and 4th William IV., the master of a ship is bound to make such a declaration. This is a declaration made in pursuance of that Act of Parliament. He enumerates the goods that he had on board, which were the goods of Zuluetta and Co., and no others, and then he says:—"I do declare that the content above written, now tendered and subscribed by me, contains a just and true account of all goods, wares, and merchandises laden on board my ship for this present voyage. That I will take no more goods on board my said ship without first paying custom, and having a warrant from his Majesty's officers." Therefore, you have here a declaration from the captain, which was the final entry made respecting the goods he actually did carry, which excluded the whole of the goods I have mentioned, which were insured to the amount of 2,666*l.*

Gentlemen, I shall show, by the documents from the Custom House, that no other goods than those belonging to Zuluetta and Co., the charterers, were put on board this vessel. I am sure that everything will be done that can be accomplished by zeal and ingenuity, on the part of my friend Mr. Phillips; but I know not what attempt can be made to show that the goods were on board. He will hardly say that they might be smuggled on board without being entered, for the duty on export is half per cent. only, and there is no temptation, therefore, to resort to any such contrivance; but, to exclude such a supposition, I shall show both by Kelly, the clerk of Zuluetta and Co., and by the mate of the ship, that certainly no more goods were on board than those that were loaded by Zuluetta and Co.; and, indeed, instead of

there being that large quantity of provisions for the voyage, that were insured by two of the policies, it will be proved to you that the ship was actually short of provisions for the voyage even to Santa Cruz. She did not take enough, as she ought to have done, to bring her back to the United Kingdom; for provisions in that part of the world are extremely scarce and of very high price, and ships when they sail to that part of the world generally take a sufficient quantity of provisions for the homeward as well as the outward voyage. This ship actually had not on board sufficient for the sustenance of the men, instead of having this large quantity of goods on board to be exported. Now you may judge what was the intention of the captain and those with whom he was acting; they had laid out premiums to a very large amount in having these policies effected; the policies were on goods that never had been purchased, and never were on board. What could have been the object of this? The only object could have been wilfully to throw away the ship—to come upon the under-writers, and thus to obtain payment from them of this sum of above 5,000*l*. Gentlemen, you will see from the facts that I am now going to state to you that that object certainly was in the contemplation of Captain Loose, and was actually effected by him. The ship sailed from Liverpool on the 7th of September, bound to Santa Cruz. Gentlemen, almost from the beginning there were circumstances of suspicion that excited the attention of the crew; for example, one of the pumps—the larboard pump, was choked up. The captain soon gave directions that there should be always two tackles in the long boat, one at the bow and one at the stern, whereby she might be ready for service on any occasion, when she might be required. Gentlemen, the ship proceeds. You will find something took place off the coast of Ireland, to which I will not now more particularly refer; but you will find she did not pursue the track that she ought to have pursued. She had no stress of weather. The captain, at all times, had the command of his course. Now, he ought to have gone by the south side of the island of St. Domingo, and so have gone on to Santa Cruz, which is the direct and usual course. He thought fit to go to the north side, and, at a place called Anagada, you will find that there clearly was an attempt to run upon a reef; that attempt, however, did not succeed; and now he proceeded along the coast of Hayti or St. Domingo. He did not pursue the course he ought to have pursued, for he kept close in shore, creeping

along and seeking an opportunity to effect his purpose; he came to a place called the Silver Key, which is not far from a port called Port Haytian, and there he made a direct attempt to run the ship on a reef. He was warned of what he was about, not only by those on board, but a gun was fired from a ship, the captain of which I will call before you—the captain of the Bencoolen—to warn him of his danger. A flag was hoisted to warn him of his danger; but he would not divert himself from the course he was then pursuing, which was to get among the breakers and to run upon the reef; he did so, Gentlemen, and he did strike; but, most unwillingly on his part, a pilot came and took him in tow, and towed him into the port of Hayti. Gentlemen, I think it was upon the 23rd of October that he was towed into that port. There he was repaired, and on the 5th of November he again sailed for Santa Cruz. Again, Gentlemen, he got out of his course, for he ought to have made directly for Cape Cruz; and having the wind and weather perfectly favorable, he might, without the smallest difficulty, have reached his port of destination in safety; but instead of doing that, he crept along the coast, looking for an opportunity to cast away the vessel. He now, you see, was in danger of reaching his destination, and there was no time to be lost; the last opportunity would fly from him, and when he was about 15 miles from Cape Cruz, he again run the vessel upon a reef. Gentlemen, she might have been got off, but he would give no orders—he would allow nothing to be done—there the ship was lost, and the greater part of the cargo perished. He and his men went to Falmouth, in Jamaica, and from thence the men returned to England. He, himself, never has returned; and it has been stated to-day, and probably truly, that he is no longer in this world to answer for his misconduct. Now, Gentlemen, you will ask me, perhaps, by what witnesses I am to prove these facts? Gentlemen, my first material witness is Maxwell, the mate, who will describe to you the events which occurred down to the time when the ship entered Port Haytian, in St. Domingo. He will describe to you what took place with regard to the reef in St. Domingo, and other matters, till she was towed in by the pilot into Port Haytian. There we lose Maxwell, the mate, for he declined to sail again with Captain Loose, and he was discharged; but, Gentlemen, before that, I should mention that, as I told you before, there was a ship, called the Bencoolen, the captain of which made a signal to Captain Loose, when he was

getting on the reefs on the coast of St. Domingo. I will call the captain of that ship before you; his evidence will be most material; he will show, as I understand, most distinctly, that an attempt to lose the ship was made on that occasion off the coast of St. Domingo; if so, you would naturally infer that when the ship did actually again sail from St. Domingo, an opportunity would be sought, and that the object would be accomplished. Gentlemen, the last witness upon this part of the case is a seaman of the name of Schultz, who was on board during the voyage—who remained till the conclusion of the voyage—who actually went to Jamaica and came from Jamaica to London. Now, Gentlemen, there is a circumstance with regard to that sailor, that I at once mention to my Lord and to you; it is, that he was induced by the captain to sign a protest giving a different account of the manner in which the ship was lost. That no doubt, Gentlemen, throws a certain degree of suspicion upon the testimony that he offers before you. I shall make no struggle about that protest,—our only object, Gentlemen, is to elucidate the truth, that the case should be fairly laid before you; and I shall not, as on a nisi prius trial, make a struggle as to who shall have the last word before the jury. We have got a copy of that protest, the original of which is in the possession of Mr. Patrick Wallace; and I shall make no scruple about allowing a copy of that protest, which was made for the purpose of being laid before the under-writers, to be given in evidence, that any advantage that can be derived from it, shall be enjoyed by the client of my friend; but what does it amount to? Why, it is clear, that if the captain had this design, it could not be accomplished without obtaining the protest. It was just as necessary that he should obtain the protest, as it was necessary that he should cast away the ship; for you may be aware, that no insurance office—no under-writers at Lloyd's, or in any part of England, would pay a loss, without a protest signed by the captain and the men on board at the time of the loss; and it was indispensably necessary, in order to accomplish his object, that such protest should be obtained; the protest was obtained—it was signed by Schultz, along with other men who were on board. But, Gentlemen, I apprehend, that when you look to the other facts of the case—when you see the probabilities of it—when you find that the captain signed these false bills of lading—that he must have been aware of the insurances—when you find, by testimony above all suspicion, that on a prior part of the voyage

he had actually attempted to throw away the ship, you will have no difficulty in giving credit to the account Schultz gives of it, though he was induced to sign the protest to which I have adverted.

Gentlemen, there is a letter, and an important letter, written by Captain Loose, but which I will not now open, for it was after the loss had taken place. It was on the 8th of December, and I should think it came within the rule my Lord has prescribed, that it was part of the *res gestæ;* but lest there should be any doubt upon that, I will abstain for the present from stating the contents of it, which might account for the manner in which the protest was obtained; but independent of that letter, I think the protest, when given in evidence, will not shake, in the slightest degree, the testimony of Schultz, so as to prevent your giving credit to the story he will tell, which is only what you would anticipate, for it is clear that it never could have been the intention of Captain Loose to reach Santa Cruz with his goods. It would have been the greatest misfortune to him, if he had not had the opportunity of casting away the ship, for then the object of these fraudulent insurances would have been defeated—the premiums would have been lost, and the attempt would have recoiled upon those who made it.

Gentlemen, with regard, therefore, to the guilt of Captain Loose, I think no doubt can be reasonably entertained; but I allow, that that alone would by no means show that Patrick Wallace, who is charged as an accessory, is guilty; but then, Gentlemen, you will look to the evidence I have already opened with regard to Patrick Wallace. You find him effecting these three insurances on goods to the amount of above 2,000*l.*; you find him in possession of bills of lading, which he knew, and must have known to be false and fraudulent; you find him effecting insurances on the strength of these bills of lading, and you find him claiming the loss; you find him again and again going, or employing others to go, to the different insurance offices, and to claim the loss; you find him giving undertakings to account for those goods if they should be saved, which he knew never had been put on board, giving them sometimes in his own name, and sometimes in the joint name of himself and his brother; and under these circumstances, I am afraid it will be impossible for you to entertain a doubt of his guilt. You cannot expect direct evidence of concert between the captain and these persons. Such consultations must take place in secret; nor can you expect that we should produce a letter of

instructions from Patrick Wallace to Captain Loose, directing him to lose the ship, or what he was to do on the ship being lost. All you can expect is, that we should show the fraudulent proceedings which were the foundation of the adventure, and prove facts wholly inconsistent with the innocence of the party, and from which his guilt must most reasonably, if not inevitably, be deduced. I apprehend that that is what we do in this case, in a most complete manner. I do not mention certain important expressions that will be spoken to with regard to Patrick. There is a witness of the name of Stott, the broker, who effected the two insurances with the Alliance and the Maritime. He was at first supposed to be implicated in this transaction: he was taken up, and kept in custody for some time. We have now reason to believe that he is innocent: he could not be guilty unless Patrick were guilty, for he was Patrick's agent in all he did; but there is great reason to believe he is perfectly innocent of any guilty knowledge: that would by no means show that Patrick was innocent, because he could only have that guilty knowledge through the instrumentality of Patrick. You will hear from him certain expressions made use of from time to time by Patrick, from which you will say whether any doubt can be entertained of his being guilty of the offence imputed to him. Now, I will only say a word with reference to the different counts of this indictment; and I apprehend, that if we prove these facts in point of law, there are several of these counts that are clearly supported. Now, their Lordships will observe, that there are several counts that lay the intent to injure the part owners of the vessel, who are Messrs. Howden and Ainslie, that might not be and was not the direct and primary object which either Captain Loose or Patrick Wallace had in view; but then they knew that, if the ship were cast away, the part owners would be prejudiced, and therefore they must be supposed to contemplate the necessary and inevitable consequences of their own acts. That has been laid down again and again, and never doubted. Further, there were insurances effected upon the body and upon the freight of the ship, and although these insurances might not be fraudulent, they were aware that the Underwriters upon those insurances would be prejudiced, for they would be called on to pay the loss thus fraudulently occasioned; therefore these counts alleging an intention to prejudice the part owners of the ship, and the Underwriters upon the goods (for Zuluetta and Company's goods were insured to the amount of 3000*l.*) would be

supported, for they were prejudiced to the amount of 3000*l.*, because a loss to that amount was paid upon the Policy Zuluetta and Co. had effected. If it had stood alone upon the counts of the Indictment, alleging an intention to prejudice the Underwriters of goods on board, and these alone had been the fraudulent insurances, a doubt of a serious nature might have arisen; for my Lords will observe the words in the act are "to prejudice the Underwriters of goods on board." Now, with regard to those goods fraudulently insured, they were not on board; and a question might arise whether within the meaning of this Act of Parliament, there being a clear intention to prejudice those Underwriters, it would still be an attempt which the Act of Parliament has expressly defined; but that question does not arise, for there are other counts free from all difficulty—the counts alleging the attempt to be to prejudice the part owners, the Underwriters, and the Underwriters who had insured the goods of Zuluetta and Co. If we make out therefore the corpus delicti, the crime itself, and that Patrick was an accessory, it will be your duty, however painful, to find a verdict of guilty against the prisoner. Gentlemen, I rejoice exceedingly, that in a case of this sort, attended with considerable complication, my friend, Mr. Phillips, will have the opportunity of addressing you upon the facts of the case; it is an advantage that the prisoner would not have enjoyed a few years ago; but I rejoice that he will have that opportunity; he will be able to state how he accounts for these bills of lading; whether the goods were on board; and if not, he will have to reconcile that with the innocence of his client. If he can raise any reasonable doubts in your minds whereby you may think the charge is not satisfactorily brought home to the prisoner, then you will have the satisfaction of finding a verdict of Not Guilty; but, Gentlemen, it is of the last importance in a case of this sort, if the crime be satisfactorily proved, that a verdict of Guilty should be pronounced, that others should be deterred from following such an example.

Mr. Jervis. There is an objection which, on behalf of Michael Stewart Wallace, I was about to take on the opening of the case, and I will now mention it, with your Lordship's permission.

Mr. C. Phillips. It goes over both.

The Attorney General. Does your Lordship think this is a convenient mode.

Lord Chief Justice Tindal. At present we are trying the case of Patrick.

Mr. C. Phillips. It is a point, my Lord, which my friend, Mr. Jervis, started at consultation, and which he has maturely considered. It goes to the jurisdiction of the court; and, if my friend can make out that this court has not jurisdiction, I should imagine that the present time will be the most convenient; for, if you are satisfied upon that point, of course the trial would end in a moment.

Lord Chief Justice Tindal. That should have been an objection taken before.

The Attorney General. This trial must be conducted like all others—in a regular way.

Lord Chief Justice Tindal. At present he has pleaded Not Guilty, and we reserve to you any real objection.

Mr. Jervis. My Lord, the objection I meant to take was this:—The offence is stated to be within the jurisdiction of the Admiralty Court and of this Court, and I meant to contend that the facts stated do not support the allegation in the indictment that it is within the jurisdiction of this court. I will not argue it if your Lordship thinks it irregular.

Lord Chief Justice Tindal. I think you had better do it at the time you make the other objection.

Mr. C. Phillips. If my friend should be successful on this point, which I have not considered, I am sure your Lordship will give me the benefit of it.

The Attorney General. If the prisoners had been tried jointly, both my friends might have been heard.

EVIDENCE FOR THE PROSECUTION.

MR. GEORGE HERRING, sworn,

Examined by Mr. Clarkson.

Where do you carry on your business? — At No. 12, Bishopsgate Street, Within.

Are you a Ship Broker? — I am.

Did you act in that capacity to procure a Charterparty for Messrs. Zuluetta & Co., and the owners of the Ship Dryad? — I did.

Have you got the Charterparty? — I have not.

Is that the Charterparty ? (handing a paper to the witness) — It is.

Are you the subscribing witness to this execution ? — Yes.

Do you know the handwriting of the firm of Zuluetta & Co., of Liverpool ? — No, of London.

Did you see them execute it ? — I did.

And Michael Wallace ? — Yes.

By Lord Chief Justice Tindal. You saw it executed by both did you ? — Yes.

You living in London, how did you see it executed by both ? — Messrs. Zuluetta & Co. have a house in London as well as in Liverpool.

By Mr. Clarkson. Look at this (handing a paper to the witness) ? — This was a Charterparty on the confirmation by the House at Liverpool—this was the Charterparty after the confirmation—the ship was engaged by Zuluetta & Co., of London, subject to their house at Liverpool not having engaged a ship, and on hearing that they had not, the Charter was confirmed.

The Charterparty dated 25th July 1839, *was put in.*

Mr. Doane. In what way do my friends put this in ? — I am not aware that the witness has proved the execution of it.

Mr. Clarkson. Yes, he says he saw it executed by both parties.

The Attorney General. I understood that he saw this executed.

By Lord Chief Justice Tindal. You saw it executed by the house in London, and also by Michael Wallace ? — Yes.

By some person in the house of Zuluetta & Co., in London ? — Yes, the first document was signed subject to the house at Liverpool not having engaged a ship, and on hearing that the house at Liverpool had not engaged a ship, the other document was signed as a conclusion of the Charter.

By the Attorney General. Did you see that instrument executed ? — I did.

By both parties ? — By both parties.

(*The Charterparty was read.*)

MR. ALEXANDER HOWDEN, SWORN,

Examined by the Attorney General.

Are you in partnership with a gentleman of the name of Ainslie ? — I am.

In what line of business ? — As ship brokers and ship owners.

Did you know the brig the Dryad ? — I did.

Were you and Mr. Ainslie part owners of that vessel? — We were.

What proportion? — One-fourth.

Who were the owners of the remaining shares of the vessel? — Mr. Michael Wallace.

Of the three-fourths? — Three-fourths.

Were you aware of her being chartered in July, 1839, to Zuluetta and Co.? — I was.

Who generally acted as ship's husband? — Mr. Michael Wallace.

Was the ship then lying at Liverpool? — She was.

Were any insurances directed by him to be effected upon that voyage? — Yes.

What insurances did he direct? — He directed 2,200*l.*—a verbal order.

Mr. Jervis. My Lord, I am here to watch the interest of Michael Wallace.

Lord Chief Justice Tindal. You cannot be heard in this case.

Mr. C. Phillips. My Lord, perhaps as I am for Patrick Wallace—

Lord Chief Justice Tindal. We can hear you, certainly.

Mr. C. Phillips. My objection, my Lord, is this:—How are we to be affected by what Michael says or does?

Lord Chief Justice Tindal. Part of the *res gestæ* upon which you are charged is the effecting other policies of insurance.

Mr. C. Phillips. But does your Lordship consider that Michael's acts are evidence against Patrick?

Lord Chief Justice Tindal. You have heard what the opening is. How far the prisoner is to be affected will depend on whether he received the money, and so on.

By the Attorney General. He directed an insurance to the amount of 2,200*l.* upon the ship? — He did; we only insured 2,000*l.* upon the ship.

But did he give any directions for insurance on the freight? — Yes.

How much? — 300*l.* on the freight out and home—copper ore.

Was there an insurance to the amount of 2,000*l.* effected upon the ship? — Yes.

Is that the policy (handing a paper to the witness)? — That is the policy.

Was Michael aware that you had effected that policy? — Yes; he had a copy of the policy from us.

Lord Chief Justice Tindal. That is the mere insurance, is it?

The Attorney General. Yes, my Lord.

(*The Policy was put in.*)

The Attorney General. I will read the material parts of it. It is in the name of Howden and Ainslie; the premium paid is 147*l.*, at the rate of six guineas per cent. on the ship Dryad, valued at 2,000*l.*; from Liverpool to Santa Cruz, in the island of Cuba; and her loading ports there and back to the United Kingdom.

Was there a total loss paid upon that? — Yes.

About what time? — In the early part of January.

1840? — Yes.

Did you pay to Michael Wallace any part of what you received? — Three-fourths.

Did you likewise effect a policy for 300*l.* upon the freight? — We did.

By the direction of Michael? — By the direction of Michael.

Is that the policy (handing a paper to the witness)? — It is.

The Attorney General. This, my Lord, is dated the 7th August, 1839. It is a policy effected at Lloyd's Coffee House by private underwriters, at and from Liverpool to Santa Cruz, in the island of Cuba, and her ports or places of loading there and back to the United Kingdom, upon the Dryad; Loose, Master; at seven guineas per cent.; and it is subscribed by three underwriters for 1,000*l.* each.

Was there a total loss paid upon that? — There was.

Did you pay any part of that 300*l.* to Michael? — Three-fourths of it.

Did Michael know that you had effected that policy for the 300*l.*? — He did.

Had he a copy of that likewise? — Yes.

The Attorney General. This last is on chartered freight, my Lord.

Cross-examined by Mr. C. Phillips.

You say that Michael Wallace was three-fourths owner of the ship? — He was.

And you, I believe, and your firm, had the other fourth? — Yes.

Will you be good enough to tell us whether you know what was paid for the ship? — Do you mean by Mr. Wallace?

You, being a fourth owner, will you put a value upon the ship? — Mr. Wallace purchased three-fourths from Mr. Thomas Gillespie and ourselves, at the rate of 1,600*l.*

By Lord Chief Justice Tindal. I understand by that that you valued the ship at 1,600*l.*? — No; he purchased three-fourths of the vessel from Mr. Thomas Gillespie and ourselves, at the rate of 1,600*l.* But, I should go on to tell you, that she was made a first-class ship immediately afterwards.

By Mr. C. Phillips. Now, tell us whether anything was done after the purchase, by Michael Wallace, to render her of greater value? — There was.

Tell my Lord and the Jury what was done, and what you think the increased value of that ship would be in consequence. — She was put into dry dock, and made a first-class ship. She was a very fine little vessel, built in the Isle of Wight; and she was made a first-class ship.

By Lord Chief Justice Tindal. When was she purchased? — In October, 1837, I think.

By Mr. C. Phillips. Can you give the Jury any idea of the increased value of the ship in consequence of being made a first-class vessel? — I can tell you what was laid out upon her—she was new coppered and repaired, at the cost of about 600*l.*

That would bring her cost to 2200*l.*, allowing the first to have been her fair value? — Yes.

Now, do you include in that the fitting up of the ship? — Provisions and other things do you mean?

By Lord Chief Justice Tindal. Do you include in the 2200*l.* the fittings up? — (*No answer.*)

By Mr. C. Phillips. And stores? — No, I mean what was laid out upon the hull.

On the stores of the ship what value would you put? — For the voyage she went on?

Yes, of course; for the voyage she was chartered for. — I cannot tell you without reference to books.

Can you give us any notion? — I should suppose probably 150*l.*

Was there no salvage upon this ship? — Not to my knowledge.

Did you receive any bill from a person of the name of Frost for 400*l.*? — We did.

What was that for? — I cannot tell you what it was for.

Was it given as for salvage? — No.

Re-examined by the Attorney General.

What did you do with that 400*l.* bill that my friend has asked you about; did you get the money upon it? — We did.

What did you do with the money? — We have the money in our hands now.

The whole of it? — The whole of it.

Now, in your judgment, what was the value of the ship Dryad in the month of August, 1839? — I consider the Dryad would have sold for 2000*l.* previous to being fitted for that West India voyage.

For that voyage to Santa Cruz? — Yes.

And that would have been a fair price for her? — It would as far as my judgment goes.

For how much had she usually been insured? — For the first voyage we insured 2400*l.*, and we insured 2100*l.*, and we insured 2200*l.* I do not think that in any case we insured under that.

Did you know of any policy effected upon the ship or freight besides the 2000*l.* and the 300*l.* on that voyage? — None whatever at the time the ship sailed, but we found out afterwards.

Mr. Samuel Bickley, sworn.

Examined by the Attorney General.

I believe you are an insurance broker? — I am.

Just look at that policy (handing a paper to the witness), and tell me whether you effected that policy for Zuluetta and Co.? — I effected that policy for Zuluetta and Co. at Lloyd's coffee house, on the 7th of September, according to the date.

I believe a total loss was afterwards paid upon it? — It was.

For the benefit of Zuluetta and Co.? — For the benefit of Zuluetta; it is endorsed upon the policy, I think, the 7th of January.

The Attorney General. My Lord, this is a policy bearing date the 7th of September, 1839, in the name of Messrs. Zuluetta and Co., at and from Liverpool to Santa Cruz, in Cuba, with leave to call at any or all the West India Islands, and to include all risk in craft to and from the ship at 25 per cent.

Lord Chief Justice Tindal. What is it on? On goods does it say?

The Attorney General. It is, my Lord, on goods, with leave to declare a value hereafter.

Did Zuluetta and Co. make this declaration of interest? (handing a paper to the witness) — They did, and I got the Underwriter's initials confirming it.

The Attorney General. Then, my Lord, on the 17th September there is the declaration and valuation.

Consisting, I think, chiefly of hardware and earthenware, and some salt? — Yes, sugar-mills, and pans, and 1000 bags of salt.

Valued at 300*l.*? — Yes.

The Attorney General. Then, my Lord, it is settled a total loss on the 7th January, 1840.

Payable in a month? — Payable in a month.

And it was paid accordingly I suppose? — It was.

And you handed over the amount; — Mr. Zuluetta's clerk is here to prove that it was handed over by the underwriters.

Was the policy signed by those underwriters whose names are subscribed here? — Yes, it was signed by the underwriters.

By Mr. Doane. Were you present, did you see them sign it? — I did.

MR. RICHARD JAMES SHEPHERD, sworn,

Examined by the Attorney General.

Do you belong to the Alliance General Maritime Insurance Company? — The Alliance Marine Insurance Company.

Have you got a policy for 715*l.* on goods by the Dryad (handing a paper to the witness)? — Yes.

Who was it executed by? — It is done in the name of M. . Wallace.

Who is it executed by? — By the three directors.

The Attorney General. This policy, my Lord, bears date the 24th August, 1839; it is by the Alliance Company, in the name of M. S. Wallace, at and from Liverpool to Santa Cruz, in Cuba, upon goods; there are the marks and the numbers of the cases in the margin; and there are, flannel six cases, 40 pieces each, 240 pieces, at 45*s.* a piece, 540*l.*; two ditto cloth, ten pieces, fifteen yards, that is valued at 90*l.*; then there are two cases of printed cottons, containing a hundred pieces, valued at 85*l.*, making in all the 715*l.* to pay average on each case at 40*s.* per cent.

Just look at that paper, marked B (handing it to the witness) was that exhibited at the time the policy was effected? — Yes.

By whom? — Mr. Stott.

Mr. Stott was the broker who effected the insurance? — Yes.

And he exhibited that? — Yes.

Did he exhibit that likewise (handing another paper to the witness)? — This was a paper we prepared from that paper.

By Lord Chief Justice Tindal. Stott was the insurance broker? — Yes.

By the Attorney General. Now look, is that signed by Stott? — That is signed by James Stott.

Look at that bill of lading (handing another paper to the witness), when did you first see that? — It was brought when a loss was claimed.

What is the letter upon it? — D.

Who brought it? — Mr. Stott.

Now look at letter E (handing it to the witness), which purports to be an undertaking? — Yes, an undertaking to reimburse us in case any proceeds should be found.

Did Mr. Stott bring that? — Yes, when the loss was finally settled we required an undertaking.

You do not know the handwriting I presume? — I do not.

Now, you can tell me if that (handing a paper to the witness) be the cheque by which you paid the loss to Mr. Stott. — Yes, that is the cheque, it is for 715*l.*

Mr. Clarkson. It is marked F, my Lord.

MR. JAMES GRAY, sworn,

Examined by Mr. Clarkson.

Are you the superintendant of the underwriting department of the General Maritime Assurance Company? — I am.

Do you produce any policy of assurance effected upon the ship Dryad? — I do (producing it).

For how much? — 1,264*l.* 12*s.*

Is it signed by your directors? — It is signed by three of the directors.

The Attorney General. This policy, my Lord, bears date the 7th August, 1839; it is by the General Maritime Assurance Company, in the name of James Stott, at and from Liverpool and Santa Cruz, in Cuba; and, my Lord, it is on goods that are specified and valued in the body of the policy—fifty-two barrels of pork; 39 tierces of beef; 38 firkins of butter; 35 crates of earthenware; 7 cases of cotton prints; and 5 bales of blankets. The separate valuations are hardly material; the valuation is at 1,264*l.* 12*s.*, at a premium of 40*s.* per cent, and it is executed by the company for the sum of 1,265*l.*

By Mr. Clarkson. That was effected by Mr. James Stott, was it? — By Mr. James Stott.

Is that (handing a paper to the witness) the paper signed by Stott, of the particulars at the time? — It is.

Mr. Clarkson. That is the document marked H, my Lord.

Did you at any time pay a sum of 80 per cent, upon the whole, as for a part total loss? — We did.

Amounting to 1,012*l.* I think? — Yes.

When was that? — In January.

1840? — 1840.

Upon that occasion was that bill of lading (handing a paper to the witness) produced to you by Stott? — It was.

Mr. Clarkson. The slip upon which the policy was effected is marked H, and this bill of lading is marked M, my Lord.

Is that (handing a paper to the witness) the cheque for 1,012*l.* which, upon the first occasion, you paid to Stott as part of this total loss? — It is.

Mr. Clarkson. It is marked I, my Lord.

By Lord Chief Justice Tindal. The bill of lading was produced at the time the claim was made? — Yes, at the time the claim was made.

By Mr. Clarkson. Did you receive that paper marked K (handing it to the witness), the valuation of the goods? — Yes, at the time the insurance was effected.

At the time the insurance was effected you received this from Stott? — I did.

Did you afterwards, in October, pay the balance of the total loss, 253*l.* odd, on receiving the letter of indemnity from Stott, which I now put into your hand? — I did.

Is that the letter of indemnity which Stott brought to you? — That is the letter.

Mr. Clarkson. The letter of indemnity is marked J, and the cheque is marked L, my Lord.

Is that the cheque for 253*l.* which you paid to make up the balance? — It is.

MR. JAMES STOTT, sworn.

Examined by the Attorney General.

I believe you are a ship broker? — Not now.

Have you been? — Yes.

With whom were you brought up? — With Selden and Johnson.

When did you leave their employment? — In the year 1837.

What did you then do? — Some time afterwards I commenced business on my own account.

In what line? — As a ship broker.

Where did you carry on your business? — At 37, Seething Lane.

Tower Street? — Yes.

When were you first acquainted with Mr. Patrick Wallace? — When I was at Selden and Johnson's.

Do you know in what line of business he was? — An ale and porter merchant.

Did he import any goods, do you know? — Bristles and isinglass.

From Russia? — Yes.

Where did he carry on business? — 18, Cooper's Row, Tower Hill.

Where was his residence? — At 18, Cooper's Row, Tower Hill.

Did he sleep there? — Yes, at his father's house, I think; his name was on the door, and the family altogether resided there.

At what time was that? — In 1839.

Do you know of his living in Windsor Terrace at any time? — Yes; latterly he did so.

When did he go to live in Windsor Terrace? — I do not know; I did not visit him; I did not know where he lived; I only judged from his office being there, and seeing the family go in and out.

Do you know that he afterwards lived at Windsor Terrace? — Yes I do.

Did he employ you at all in your business? — He did.

In passing entries for him? — He did.

Did he ever say anything to you about insurances? — He gave me an order to effect some insurances.

When was that? — In 1839, the month of August I think.

What order did he give you? — To do 1,264*l.* at the General Maritime Insurance Office, on goods by the Dryad.

With the Maritime Insurance Office? — Yes, at the General Maritime Insurance Office.

Was that all that was said at that time? — That was.

Did he give you any account of the goods that were to be insured? — Yes, of course he did that.

Tell us what. — He gave me a paper containing a specification of them.

Is that the paper he gave you (handing a paper to the witness)? — That is my writing, copied from the one he brought me —copied from his document.

What did you do with the one he brought you? — He took it away with him; I copied it from his words or from his directions.

Did he see this? — He had his invoice and a lot of papers with him.

Did he see this? — He saw this.

Well, did you shew this to the General Maritime? — That was my duty to shew that to the office.

(*The valuation was put in.*)

Is this (handing another paper to the witness) the slip which you left with the General Maritime? — That is the slip which was made out by them at the time I went to do the insurance.

It is signed by you? — Signed by me.

Under the instructions you received? — Yes.

(*The slip or memorandum, dated* 21*st August*, 1839, *was put in.*)

This policy by the General Maritime, marked G, is the policy which you effected accordingly? — It is.

Did you keep it in your possession, or did you hand it over to Mr. Patrick Wallace? — I handed it over to Mr. Patrick Wallace.

Did he at any time give you any instructions to claim a loss upon that policy? — He did.

When? — In the month of January, 1840.

Did he then give you the bill of lading? — He brought me the bill of lading, and asked me if it was of any consequence its not being stamped; whether the company would make any objection.

Is that the bill of lading (handing a paper to the witness)? — It is.

That was the first time you saw that bill of lading, I suppose? — That was the first time I saw the bill of lading.

What did you say to that? — I told him I thought there would not be the least objection.

Did he go and get it stamped? — Yes; I went with him.

You said you thought it would not be of any consequence. — I thought it was of no consequence; but he considered it was.

And went and got it stamped? — Yes.

Paying a penalty? — Yes; 5*l.*

Did you claim a total loss upon that policy of 1,264*l.*? — I did.

How much was paid to you at first? — 80 per cent.

When was the 80 per cent. paid? — I do not know the day.

Is that the cheque by which it was paid (handing a cheque to the witness)? — It is.

It is indorsed by yourself, is it not? — Yes.

Did you hand this cheque over to Patrick? — I did.

(*A cheque, marked letter* I, *dated* 21*st January*, 1840, *was put in and read, for* 1,012*l.*)

At that time did they decline paying more than the 80 per cent.? — They did.

By Lord Chief Justice Tindal. You claimed a total loss, did you? — I claimed a total loss; but they objected to pay more than 80 per cent.

By the Attorney General. Did Patrick afterwards desire you to claim the remaining 20 per cent.? — He did, frequently.

Did you do so? — I did.

Was it at last paid? — Some considerable time afterwards.

Did they ask for any undertaking? — They did.

Did you communicate that to Patrick? — I did.

Did he give you that letter (handing a letter to the witness)? — He did.

Whose handwriting is that in? — His writing.

Both the body and the signature? — The whole of it.

(*A letter, marked* J, *signed* P. M. S. Wallace, *addressed to the Directors of the General Maritime Assurance Company, dated* 9*th October*, 1840, *was put in.*)

The Attorney General. Your Lordship will observe the signature is P. M. S. Wallace.

Now on your giving them that undertaking, did they pay you the remaining 20 per cent.? — They did.

By that cheque you hold in your hand? — The same.

Is this cheque indorsed by you? — It is.

Did you hand it over to the prisoner Patrick? — No, I did not.

What did you do with it? — I got it changed, and paid him the balance due to him.

Did you deduct your commission? — I did.

(*A cheque, marked* L, *dated* 10*th October*, 1840, *for* 253*l. was put in.*)

By Lord Chief Justice Tindal. You got the cheque changed, and after deducting your commission you paid him the balance? — After deducting the commission and other amounts due to me.

By the Attorney General. Do you recollect what was the amount

of the balance? — The amount of the balance that was due to me?

Yes. — About 44*l.* or 45*l.*, but I received 50*l.*

Did you explain that to Patrick when you paid him the balance? — Yes, he gave it to me in consequence of the immensity of trouble I had had.

And he was satisfied? — Yes, quite so.

Just look at that (handing a paper to the witness)? — That is the receipt he gave me for the balance.

Mr. Clarkson. It is marked V. V.

(*A receipt marked V. V., and dated* 10*th October*, 1840, *for* 253*l. was put in and read.*)

Lord Chief Justice Tindal. Whose writing is this?

The Attorney General. In the hand-writing of the prisoner, my Lord.

The Witness. The receipt is in my writing; the signature is his.

Do you remember when he desired you to go to the General Maritime his giving you any instructions about leaving any documents, as to whether you were to leave them? — When I took the protest first to make the claim, he desired that I would not leave it longer than two days.

Did he give you any reason? — Yes; that he had got it by favour; and he had promised to return it in that time.

Did the office at first refuse to pay the 80 per cent. on seeing the protest? — They did.

Did you mention that to the prisoner? — I did.

What did you say to him? — I told him the gentleman at the office said he never saw such a protest in his life.

Was any thing more wanted? — I wanted the clerk's letter which conveyed the protest.

What said he to that? — That they had no business with it; that he had not got it, and should not show it them.

Could not, or should not? — Should not show it them.

Did you say any thing to him upon that? — I told him if he could any ways get it he had better do so, for they would not settle without it, and he said he would endeavour to do so.

Was that all that passed between you at that time? — Yes.

Was any thing more said about the letter? — Not that day, but the next or two afterwards he brought the letter, and stated it had cost him two sovereigns.

What more did he say about the letter? — I asked him in

what way, and he said he had given two sovereigns to the clerk in Howden and Ainslie's office ; and his reason for doing it was that he did not wish Howden and Ainslie to know he had got it, for he did not wish his brother to know that he was settling his insurance.

By Lord Chief Justice Tindal. Repeat your answer if you please? — I asked him how it had cost him two sovereigns.

What was his answer ? — He said he had given it to Messrs. Howden and Ainslie's clerk, who had given him the letter privately, unknown to Messrs. Howden and Ainslie, in order that they should not have the power of mentioning it to his brother, who he did not wish to know he was settling his insurance.

By the Attorney General. Did Patrick, in August, 1839, give you orders to effect an insurance by the Alliance ? — He did.

What were those orders ? — That his brother wanted 715*l.* insurance done.

On what ? — On his goods by the Dryad.

On whose goods ? — On his brother's.

Did he say any thing more to you at that time ? — He told me to go and ascertain the premium, which I did.

Did he give you a specification of these goods ? — He did.

Is that the specification and valuation (handing it to the witness) ? — The same.

(*The specification marked B was put in and read.*)

Is that (handing another paper to the witness) the slip that you made out from that specification ? — No ; this was made out by the gentleman at the office, and I—I signed it.

(*The document marked C, dated the 22nd August,* 1834, *was put in and read.*)

Now is this which I hold in my hand, marked letter A, th policy which you effected accordingly with the Alliance ? — Exactly.

Did you hand it over to the prisoner ? — I did.

Did he give you instructions at any time to claim a loss upon that policy from the Alliance ? — He did.

When ? —Perhaps a few days after the loss was claimed from the General Maritime.

Do you recollect any thing that he said to you upon that occasion ? — The Alliance Company required a letter of indemnification.

But when he first gave you instructions to go and claim the loss from the General Maritime ? — From the Alliance.

From the Alliance? — He gave me no instructions but to get it.

A total loss? — A total loss.

Did he furnish you with any documents? — None whatever, but the protest and the policy.

Did he give you any bill of lading? — And the bill of lading.

Is that the bill of lading that he gave you? — I take it for granted, these things are so customary to us that we do not speak of them in the way you do; — yes, I know that.

That is the bill of lading? — That is the same.

Did you demand a total loss from the Alliance? — I did.

How much did they pay at first? — They paid the whole of it.

Do you know in whose hand-writing that bill of lading is; the bill of lading of the goods insured by the Alliance? — In the hand-writing of Patrick.

Now, just look at the bill of lading of the goods insured by the General Maritime; in whose hand-writing is the body of that? — Patrick's.

Have you seen him write? — Frequently.

Do you know his hand-writing? — Well.

Have you any doubt that the body of both is his? — None whatever.

You do not know the hand-writing of Captain Loose, I suppose? — No, I do not.

At the Alliance did they ask for any undertaking? — They did; they wanted a letter of indemnification.

Did you mention that to the prisoner? — I told him they wanted a letter from his brother.

Well? — He said one from him would do just as well; that he had given one before to Lyndall and Hall for the Neptune Company; they had required a similar letter.

Did you see him write this? — No, I did not.

Do you know it is his hand-writing? — I know it.

(*The letter of indemnity, dated 5th February,* 1840, *signed M. Wallace, and addressed to the Directors of the Alliance Insurance Company, was put in and read.*)

Upon that undertaking did the Alliance pay a total loss? — They did.

Is that the cheque by which they paid it? (handing a cheque to the witness) — The same.

Did you pay this to Patrick, the prisoner? — I did.

Immediately? — Immediately.

Who wrote this "London and Westminster Bank" upon it? — I do not know; I should rather imagine it was done by the party who gave the cheque.

Was there any question asked about who were the bankers of Patrick or Michael? — I cannot say, but I think it probable if they had asked me I should have said the London and Westminster Bank.

They were whose bankers? — Wallace's bankers.

Patrick's? — Yes.

(*A cheque on Smith Payne and Smith, for* 715*l.*, *was put in and read.*)

By Lord Chief Justice Tindal. I think you say the London and Westminster Bank were the bankers of the prisoner? — They were.

By the Attorney General. Look at that paper, marked R. R.? — That is Patrick's writing; it was given to me.

Do you know on what occasion this was signed by the prisoner? — It was given to me upon my giving him the two cheques.

(*The receipt was put in and read.*)

By Lord Chief Justice Tindal. Is that signed by the prisoner? — Yes.

Written by him? — Yes.

By the Attorney General. Is it all in his handwriting? — All.

Do you recollect his saying anything about his brother when you asked him for papers to settle with the General Maritime? — I asked him if he had received any further information about the wreck, and he said his brother had received a letter. I said, That is all right then; will you give it to me? I asked him for the letter to take to the General Maritime Insurance Office.

What did he say when you said, It was all right? — I asked him for it to take to the General Maritime Insurance Office.

What said he to that? — He said he wished they might get it, for that he did not intend to show it them.

Did he say anything more? — That they had the protest and the policy, and that was all they could require by law to settle it.

Did you say anything upon that to him? — He said if they did not settle before the twelvemonth was up, he would make them. I said it was better to do it amicably if he could.

Did you say anything to him about whether anything was saved? — I asked him about the particulars of the letter, and he said there were some pans saved, but no beef or pork.

How did he say that? — Laughingly. He laughed when he said there was no beef or pork.

Did you put any question to him when he laughed? — I asked him what he was laughing at.

Well, what said he to that? — He said that Loose had done the job very well. I asked him what job. He laughed again, and said I was not half awake.

Did he, at any subsequent time, say anything to you about confidence? — That was when he requested me to write a letter to the Consul.

He requested you, at one time, to write a letter to the Consul, when was that? — When the General Maritime refused to pay the remaining 20 per cent., upon the ground that there were no more papers, they suggested writing a letter to the Consul.

Did you tell him that? — I did.

The Consul where? — St. Iago da Cuba.

By Lord Chief Justice Tindal. Did you write the letter? — I did.

Did he tell you what to say? — He did.

What was it? — It was stated that a paragraph had appeared in the Shipping Gazette—

Mr. Clarkson. We have the letter here.

The witness. I can tell the substance of the letter.

By the Attorney General. Was it done by a Manifold Letter Writer? — No.

(*A Manifold Letter Writer was handed to the witness.*)

Just see if you discover that letter there? — Here is a copy of the letter.

In whose handwriting is it? — It is in Patrick's handwriting.

(*The letter, dated* 15*th March,* 1840, *and signed James Stott, addressed to John Hardy, Jun. Esq., was put in and read.*)

Did he dictate that postscript about confidence? He did.

Did you make any remark to him about the postscript? — I asked him the reason of it.

Anything more did you ask him? — I told him I would not do it without he gave me some explanation. He said, "Do as I direct you, or else leave it alone."

Did you say anything more to him at that time? — He said the reason of his confidence was because the ship was chartered by Zulueta and Co., and that they did not fit up the ship, and, consequently, that he and his brother had done so; and he did not wish them to know that they had shipped goods in the ship, otherwise they would charge freight.

Did he say anything about Captain Loose at that time? —

Also, that he did not wish Captain Loose to hear that he was making any enquiries.

Now do you recollect any conversation with the prisoner after the answer was received? — Yes; the answer stated that Captain Loose had left there with the papers for England—

Had you any conversation, I say, with the prisoner Patrick after that? — I had.

What was that conversation? — He said Loose or papers never would arrive.

Had the answer stated that Loose was coming? — The answer stated that Captain Loose had left there with the papers for England.

Is this the answer (handing a paper to the witness)? — It is.

Did he shew you the answer? — The answer came through me, and I shewed it to him.

(*A letter, dated Lloyd's Agency, St. Iago da Cuba, signed J. J. Lloyd, and addressed to James Stott, Esq.*, 8, *Ingram Court, London, was put in and read.*)

Was that observation that Loose and the papers never would arrive, after he had seen that letter? — It was his remark upon my shewing him the letter.

What did you say to him? — I asked him his reason for saying so. He said that Loose was a big rogue, and no doubt he had picked up all he could from the wreck, and had gone away to the States.

In what manner did he make that observation? — Jokingly.

Do you afterwards recollect the prisoner saying anything about Loose being dead? — Yes; sometime after that he said Captain Loose was dead.

About how long? — It might be a month.

What did he say about the Captain? — I was asking him if he had any further intelligence from Captain Loose. He said he believed he was dead.

Well? — That he had died on board the "Premier," coming home.

Did he say anything about his trunks? — I asked him if he had received the papers; and he said his trunks had been opened, but there were no papers.

By Lord Chief Justice Tindal. What did he say about the captain's effects? — I supposed the papers were amongst them, and I said so to him.

By the Attorney General. Did you at any subsequent time put

any question to him about Captain Loose? — Yes; I asked him again if any of his friends had got any information as to how he died, or what was the cause of his death. He replied no; he believed he was not dead—that he was in London, and had been in London three weeks.

Did he say anything more about it? — I said if he were in London why did he not go to the General Maritime and obtain a settlement, for that his word, I should imagine, would be sufficient. He replied, by saying, that he wished they might get Captain Loose there, for he would not go he was quite sure.

Well? — He said he had not even gone to settle his insurance of his own chronometer.

Was anything said about the Dryad, on that occasion? — In what way?

Do you recollect any other part of the conversation between you and Patrick Wallace upon that occasion? — No.

Do you recollect any other conversation you had with him prior to his being taken up? — I remember talking to him at his office in Crosby Hall Chambers. I asked him if he had ever seen Captain Loose?

You say Crosby Hall Chambers; who lived there? — He had an office there.

Patrick? — Yes, after he left Cooper's Row.

What said you to him in Crosby Hall Chambers? — I asked him if he had seen Captain Loose, and he said he had not seen him.

How long was this after the last conversation you mentioned? — It might be three or four days or it might be a week; I had so many conversations with him that I cannot say particularly.

What more did he say? — That he was not in London; that he wished he were, and he would give him a ship directly, for he was a very clever fellow and deserved all he got. He then said he had done the Dryad job very clean, or something to that effect. I will not say those were the very words he used.

According to the best of your recollection, those were his words? — They were his words, according to the best of my recollection.

Did you say anything to him about that? — I said he must be well paid for it, if he had done so. He laughed and said—"Oh, a thousand or two."

In what manner did he say that? — Laughingly.

Do you recollect when the prisoner was taken into custody? — Yes.

What day was that? — The 27th November.

Did you see him that day at the Mansion House? — I did.

Did you say anything to him? — I asked him what was the meaning of it.

Anything more? — He said it was the Dryad.

Well? — I said if that is the case, then my suspicions all along have been correct.

What said he? — He said it was a bad job, but that I need not fear.

Anything more? — That he was afraid he should be transported.

Did he give any reason why you need not fear? — Because I was only an agent.

But he said that *he* would be transported? — He was afraid so.

What did you say to him? — I said, Why should you fear that? you were not master of the ship.

What did he say to that? — He said, O! the goods were never on board, and that there were papers in his house that would prove him guilty.

In whose house? — In his own house in Windsor Terrace.

Had you been taken into custody? — Yes; I had.

At that time? — I was taken about 9 o'clock in the morning.

And about what hour did this conversation take place between you? — About 12 o'clock; about five minutes before I went up before the Lord Mayor.

Did you afterwards see him when he was in confinement? — I saw him several times.

Did anything more pass between you that day? — At the Mansion House?

Yes. — Going back in the coach he said his brother was the biggest rogue. He told the officer that he should be after his brother, for he was the rogue.

That he was the biggest rogue? — That he was the rogue; that all that he had done was for him—which I do believe. I do believe that he would not have been in the scrape he is, except for his brother.

Who was the officer? — Roe.

Cross-examined by Mr. C. Phillips.

About how long was it after the conversation in which he said

he was afraid that Zulueta and Co. would find out about the goods being on board, and thereby defrauding them of freight, that he was taken up? — I do not understand your question.

You do not understand the question? — No; I thought you were speaking of the Sisters; I thought you said Julia.

There is the firm of Zulueta and Co., who had freighted the ship? — Yes.

You have told us of a conversation in which the prisoner told you that he was afraid if such a thing took place, that the Zulueta firm would find out that goods were shipped on board unknown to them, without paying the freight. About how long was it after that conversation that he was taken up? — About a month I should say.

And you had the misfortune at that time to have been taken in custody? — Yes, indeed, I had.

I do not suppose you deserved it. I do not insinuate it in any way. Now, was there any body present at the conversation between you and him at the Mansion House? — Not to hear. I cannot say whether he heard or not.

I did not ask that question; do not fence, but answer the question; was there any body present? — Yes.

Who? — Mr. Phillips.

Do you mean the Solicitor for the prosecution? — The son of the Solicitor.

How near was he to you and Patrick Wallace at that time? — He was almost touching us, but I had not noticed him.

He was almost touching you; Well? — He interrupted us and told us we must not speak.

Now you say, Mr. Stott, that Patrick Wallace said a great many things in a jocular manner; were all his conversations in a jocular manner with you? — Yes, I should say they were. I never thought any thing of them; I thought it was all his joke.

Did he never become rather serious with you in the course of one of your conversations? — When I told him I had heard of ships having been sent out to be lost, and asked him if the Dryad was one of those, he became very indignant. I said so at the Mansion House.

Did he not threaten to kick you out of the room for the insinuation? — He did.

That was in your deposition? — I do not say whether it was or not; I know that he did say so.

You just said, you said that at the Mansion House? — I said there, that he was indignant.

Do you mean to say that this is the first time you have said he threatened to kick you out? — I do not know whether it is or not.

But he *did* threaten to kick you the moment you insinuated such a thing? — He did.

Did you miss Patrick Wallace from London at all, in the course of these transactions? — I did.

At what time? — I think it was about July last year. I had an appointment with him.

Perhaps you are aware that he went to St. Petersburg? — He told me he was going to St. Petersburg.

Did he tell you the business? — He told me upon business.

Now, I will ask you, Did you suppose during the whole intercourse with this young man Patrick Wallace, that there was anything wrong in this business? — I thought there were many things that were curious; but I must say, I had too good an opinion of him to suppose that there was any fraud.

According to your knowledge of him, he had always borne in his business a good character? — I thought him one of the most respectable parties I could wish to meet with.

Can you tell us how soon it was after Patrick Wallace was taken up, that his brother was taken—about how soon? — I think about three weeks. I remember hearing the morning that he was brought into the Compter.

Did you know of his two sisters being taken into custody? — I knew of it afterwards.

Did you happen to see them at the Mansion House? — I was not there at the time.

Then you have never seen them there? — No.

I mean as witnesses? — I saw them on the day I was bailed out in the ante-room of the Mansion House; but I had no conversation with them.

Re-examined by the Attorney General.

Do you know what had become of Michael in the meantime? — I do not know of my own knowledge; I only know what I heard, and what I have seen in the papers since, for I read all the examinations.

Did you see him in London during those three weeks at any time? — I did not; I never saw him until I appeared at the Mansion House with him.

Have you ever had any difference with Patrick Wallace at any time? — Never.

Either before he was taken into custody or since? — None whatever.

Mr. Michael Wills sworn.

Examined by Mr. Clarkson.

Are you the Secretary of the Neptune Marine Insurance Company? — I am.

Look at the policy I put into your hand, marked Q (handing a paper to the witness),—Was that policy effected at the Neptune Insurance Company on the ship Dryad? — On ship and outfit.

For how much? — For 700*l.*

Was Mr. John Chapman the Chairman? — Mr. John Chapman and Mr. James Cockburn were the Directors who signed the policy.

Are there other members of the Company? — Yes; *they* signed on behalf of the Company.

Are there other members of the Company? — There are.

Are you the subscribing witness to the execution? — Yes.

For how much money is that policy? — 700*l.*

The policy was put in.

The Attorney General. It is dated 12th August, my Lord, 1839. It is in the name of Selden and Johnson, as Agents, from Liverpool to Santa Cruz, in the island of Cuba, and ports of loading there and thence to Liverpool, or the port of discharge in the United Kingdom, on the Dryad ship and outfit, valued at 2,700*l.*, at seven guineas per cent. This policy is for 700*l.* The ship is valued at 2,400*l.*, and the outfit at 300*l.*

By Mr. Clarkson. Are you subscribing witness to another policy, dated the 17th August, in the same year, upon the chartered freight of the same ship, for 700*l.* for the same voyage (handing the document to the witness)? — I am.

Is that also signed by two of the Directors? — Yes, Mr. John Chapman and Mr. Alexander Denoon.

For themselves and the other Directors of the Company? — For themselves and the other Directors of the Company.

Mr. Clarkson. It is dated the 17th August, my Lord, by Selden and Johnson, as agents upon the ship Dryad, on a voyage from Liverpool to Santa Cruz and St. Iago de Cuba, and from

thence to Swansea, in Glamorganshire, for 700*l.*, on chartered freight, valued as per charter party at seven guineas per cent., and the instrument itself is marked with the letter R.

Are you also a subscribing witness to a third policy effected on the same vessel for goods on board the same vessel, dated 21st day of August, for 687*l.*, signed by George Faith and Alexander Denoon, two of the Directors, for themselves and the Company? — I am.

Mr. Clarkson. This is dated 31st of August, 1839, effected by Lyndall and Hall, for 687*l.*, for 30 tierces of beef, 43 barrels of pork, 35 firkins of butter, 50 crates of earthenware, making 687*l.* value in the policy on board the Dryad, on a voyage from Liverpool to Santa Cruz, in Cuba, at 40 per cent.

Look at that bill of lading (handing it to the witness). Is that the bill of lading that was produced upon effecting the policy upon the goods? — It was produced on claiming the loss.

Was there a total loss claimed on those three policies? — There was.

Do you know the hand-writing of the body of that bill of lading, such of it as is writing? — I do not.

To Mr. Stott. Be so good as to look at the body of that bill of lading. Whose writing is it? — Patrick Wallace's.

(*The bill of lading marked F was put in.*)

To Mr. Wills. Now, are those the two cheques, marked V and U, by which you paid the sums mentioned therein, 1400*l.* and 687*l.* (handing two cheques to the witness)? — They are; to the respective brokers.

Before they were finally paid or settled, did the office, of which you are the Secretary, require a letter of indemnity? — On all of them.

Did your office require a letter of indemnity before they would finally settle? — They did.

Look if that which is marked W is the letter of indemnity given you? —This was given in respect of the goods.

Who are the agents through whom this was conducted? — The insurance on the goods was effected by Lyndall and Hall. The two policies, one on the freight and the other on ship and outfit, were effected by Selden and Johnson.

Were Selden and Johnson the agents to whom the cheque for 1400*l.* was paid, and Lyndall and Hall the persons to whom the 687*l.* were paid? — They were.

Now did you have the one letter of indemnity, which is now in your hand, or two? — I received two.

One from each agent? — One from each party.

To Mr. Stott. Look at this (shewing a letter to the witness)? — This letter marked X, the body of it is in the hand-writing of Mr. Selden and the signature by Mr. Michael Wallace.

The one marked W? — That presented by Lyndall and Hall —I do not know the writing in the body, but the signature to it is Patrick's hand-writing.

By Mr. Doane to Mr. Wills. About this insurance, this policy on chartered freight; I only wish to ask whether this is not a policy for the chartered freight out and home? — It is.

By Mr. Clarkson. Now look at those three papers marked O O O, P P P, and Q Q Q, are they the slips produced by the agents to effect the insurances (handing the papers to the witness)? — I received two of them as the slips for that purpose. I did not receive them from the agents myself. One I did.

They were the slips produced at the office upon which the policies were issued? — Yes.

(*A Letter marked W, dated 5th February,* 1840, *signed M. and P. Wallace, and addressed to the Directors of the Neptune Insurance Company, was put in and read.*

Another Letter, marked X, dated 18, *Coopers'-row, 5th of February,* 1840, *signed M. S. Wallace, addressed to the Directors of the Neptune Marine Insurance Company, was put in and read.*

A Check, marked U, dated London, 5th February, 1840, *for* 687*l.*, *signed Benjamin Lawrence, was put in and read.*

Another Check, marked V, for 1400*l.*, *dated the 5th February,* 1840, *was put in and read.*)

MR. THOMAS JOHNSON sworn.

Examined by Mr. Bodkin.

Are you a ship and insurance broker? — Yes.

You carry on business, I believe, in partnership with Mr. Selden? — Yes.

Just look at those two policies (handing them to the witness). Did you effect those policies with the Neptune? — Yes.

For whom? — For Michael S. Wallace.

Did you see him upon the subject personally? — No.

Just look at those four letters. Did you receive those four letters in the course of the transaction (handing some papers to the witness)? — Yes, I did.

Begin with the letter marked Y, and tell whose handwriting

you believe it to be in? — I believe it to be Michael Wallace's writing, but I never saw him write.

Have you been in the habit of corresponding with him and acting upon that correspondence? — Yes.

You believe the letter, marked Y, to be his handwriting? — Yes.

Now look at letter Z? — That also.

A A? — Also.

And B B? — Also.

(*A Letter, marked Y, dated Coopers'-row, 9th August,* 1839, *was put in and read.*

Another Letter, marked Z, dated Saturday evening, and addressed to Messrs. Selden and Johnson, was put in and read.

Another Letter marked A A dated Coopers'-row, 10*th August,* 1839, *signed Michael Wallace, and addressed to Messrs. Selden and Johnson, was put in and read.*

Another Letter, marked B B, dated 14*th August,* 1839, *signed M. S. Wallace, and addressed to Messrs. Selden and Johnson, was put in and read.*)

Are those the slips that were handed in the usual way to the Neptune upon which these policies were issued? —Yes.

Signed by your firm? — Yes.

Did you afterwards receive from the insurers the amount of those policies as for a total loss? — It was received by my partner.

By whose desire was that done? — By the desire of Michael Wallace.

When did you receive them? — On the 5th February.

In the year 1840? — In the year 1840.

You received the total amount, 1400*l.*? — 1400*l.*

Be so good as to look at this check, marked C C (handing the check to the witness). — The check is in my partner's writing.

Is that the check, which you say was in your partner's writing, by which the proceeds of those policies were paid? — Yes.

To Michael Wallace? — Yes, his name is on the back.

It is not for 1400*l.* I suppose the difference is for your charges? — Yes; less the premium and commission.

Mr. Bodkin. This is a check on Curries' for 1,287*l.* 18*s.* 6*d.*, and on the back of it there is the signature of Michael S. Wallace.

Did you hand that check over, or did your partner? — My partner.

MR. ROBERT SELDEN, sworn,

Examined by Mr. Laurie.

I believe you are the partner of the last witness, Mr. Johnson? — I am.

Will you look at that check (handing it to the witness), in whose handwriting is it? — Mine.

To whom did you deliver that check? — To Michael Wallace.

Was it indorsed in your presence? — It was indorsed in my presence.

(*The Check was put in.*)

Did you procure this letter of indemnity (handing the letter to the witness)? — I sent it down to Cooper's Row for the signature of Michael Wallace.

By Lord Chief Justice Tindal. What is that letter? — It is marked X.

Lord Chief Justice Tindal. It is already in evidence.

MR. HENRY HALL, sworn,

Examined by Mr. Clarkson.

Are you in partnership with Mr. Lyndall as ship brokers in Leadenhall Street? — Yes.

Look at that policy effected for 687*l.* in the Neptune, marked S (handing it to the witness), was that effected through your agency with that office? — Yes.

Did you receive the amount of that policy? — Yes.

By whose order did you effect that policy? — By the order of Patrick Wallace.

What were the orders that you received upon that occasion? — Merely a slip of paper.

It was in writing was it? — Yes.

You have not got that slip of paper have you? — No.

Have you not got the slip of paper you received from him? — No.

Did you make out your slip, for the purpose of taking it to the Neptune, from the paper that was handed to you? — Yes.

Look at that (handing a paper to the witness) that paper is marked Q. Q. Q.? — Yes; the clerk of the office made it out from my instructions.

You had instructions from Patrick Wallace? — Yes.

Did you afterwards make any claim upon the Neptune in respect of that policy for a total loss? — Yes.

By whose direction? — By the direction of Mr. Patrick Wallace.

(*A paper marked Q.Q.Q. was put in and read.*)

Did you on the following day after you had effected the insurance for the 687*l.* in the Neptune, effect an insurance for 600*l.* with the Indemnity Mutual Marine Insurance Company?— Yes.

By whose directions? — Mr. Michael Wallace's.

Did you afterwards claim upon that insurance also as for a total loss? — Yes.

By whose direction? — Mr. Patrick Wallace; he brought the protest.

Look at the bill of lading, marked T, which I now put into your hand; who produced that bill of lading to you? — Mr. Patrick Wallace.

At the time when you were instructed to make the claim? — Yes.

That bill of lading referred to the Neptune? — Yes.

But it was given to you by Patrick, was it? — Yes.

Now on the 29th January did you receive the letter marked D D? — Yes.

Whose writing is it? — I believe it to be Mr. Michael's.

(*A Letter dated 18, Cooper's Row, 29th January, 1840, signed Michael S. Wallace, and addressed to Lyndall and Hall, was put in and read.*)

You say you were directed to make a claim, as for a total loss, to the Mutual, and you did so? — I did.

Did you receive the money? — My clerk did.

Did he bring it to you? — Yes.

What did you do with it? — Paid it into our bankers.

And to whom did you pay it afterwards? — To Mr. Patrick Wallace. I paid him 500*l.* on account.

You had received the Neptune? — Not then.

You only received the Indemnity Mutual? — Yes.

That was for 600*l.*? — Yes.

And you paid Patrick, the prisoner, 500*l.* on account? — I did.

On what day was that, do you recollect? — About the 29th January: the 29th or 30th.

On the 5th February did you receive the amount from the Neptune? — Yes.

On the same day did you give to Mr. Lyndall the younger, the clerk to your establishment, a check for 700*l.*? — Yes.

Is young Mr. Lyndall here? — I think so.

Is this the check that you gave to young Mr. Lyndall to pay to the prisoner (handing a check to the witness)? — Yes.

Was that on account of both policies? — On account of both.

The remainder, and what had been received from the Indemnity Mutual? — Yes.

And what you afterwards received from the Neptune? — Yes.

Before you received the amount from the Neptune, we understand a letter of indemnity was required? — Yes.

And you procured one? — Yes.

Is this the check you gave him on account: 500*l.*? — Yes.

And this other, marked F F, is for the 700*l.*? — It is.

(*A Check, marked E E, dated 20th January*, 1840, *on Currie and Co., for* 500*l. signed Lyndall and Hall, was put in and read.*

Another Check, marked F F, dated 5th February, 1840, *for* 700*l., signed Lyndall and Hall, was put in and read.*)

On the following day, 6th February, did you give a check to the same clerk for the balance? — Yes.

Is that the check so given, marked G G? — Yes.

5*l.* 13*s.* 2*d.*? — Yes.

Do you know the writing upon the back of this (handing it to the witness)? — No.

To Mr. Stott. Whose writing is that signature on G G, P. M. S. Wallace, upon that check? — The prisoner's.

The second is your own, I believe? The second is my own.

(*A Check for* 5*l.* 13*s.* 2*d., signed Lyndall and endorsed by Patrick Wallace, and James Stott, was put in.*)

Mr. Henry Stewart sworn.

Mr. Clarkson. Are you the subscribing witness to the policy before you, marked K K? I am the subscribing witness.

Is that policy executed by two of your directors, Mr. Aston and Mr. Hibbert? — Yes.

George Hibbert? — Yes.

What is the Christian name of Mr. Aston? — William Aston.

It is signed by them on behalf of themselves and other proprietors of the company? — Yes.

The Attorney General. It bears date the 22d August, 1839. In the names of Lyndall and Hall. The premium is 50*l.* 8s. It is on freight by the Dryad, from Liverpool, to any port or ports in Cuba, and back to Swansea.

Mr. Clarkson. The note and slip for this policy are of the same letters, K K.

Mr. Oliver Thomas Lyndall, sworn.

Examined by Mr. Clarkson.

Were you, at the time we have been speaking of, a clerk in the firm of Messrs. Lyndall and Hall, the ship brokers? — I was.

Did you receive from Mr. Hall, who has just gone down, a check for 700*l.*, to be paid to the prisoner Patrick Wallace? — I did.

To whom did you pay it? — To Patrick Wallace.

Did he indorse the check? — He did.

In your presence? — Yes.

I see it is partly torn off? — It was on the back when I was before the Magistrate at the Mansion House.

Did you also receive from the same gentleman the check E E. for 500*l.*? — This was paid in the office—in the counting-house.

To whom? — Mr. Patrick Wallace.

Was it handed by you to him? — I think it was by Mr. Hall, in my presence.

Now look at this letter, marked W (handing it to the witness). That is the letter of indemnity. Is the body of that letter your writing? — It is.

Was it signed in your presence? — It was.

By whom? — By Mr. Patrick Wallace.

Mr. Francis Lewis Philip Secretan, sworn.

Examined by Mr. Bodkin.

Just look at that policy, K K K (handing a paper to the witness). Are you a party to that Insurance? — I am an underwriter.

And there are two others? — There are two others.

Mr. Clarkson. It is to satisfy that particular count which alleges it to be to prejudice the underwriters.

Mr. Samuel Marshall, sworn.

Examined by Mr. Bodkin.

Just look at that policy, marked X X, for 3,000*l.* (handing a paper to the witness). Are you an underwriter upon that policy? — I am.

There are others? — There are.

Do you know the handwriting of any others who are here? — Yes, I do.

Do you believe those to be the signatures of the parties whose names appear there? — Yes.

By Lord Chief Justice Tindal. There are two others? — Several others.

Do you know them all? — Yes, I do.

How many others are there? — Fourteen.

Mr. William Lodge, sworn.

Examined by Mr. Clarkson.

Are you the secretary to the Marine Insurance Company? — Yes, I am.

Are you the subscribing witness to a policy for 2,000*l.*, dated 10th August, 1839? — I am.

By whom, on the part of the Company, is that policy executed? — By Mr. John Stewart and Mr. Benjamin Green, both directors.

Signed for themselves and the other members of the Company? — Yes.

By Lord Chief Justice Tindal. Has that any mark to it?

Mr. Clarkson. It is letter O, my Lord.

Now, in the month of January, last year, was a claim made at the office as for a total loss upon that policy? — There was.

Was the loss adjusted by you on the 8th of that month of January with Messrs. Howden and Ainslie? — It was.

Had Messrs. Howden and Ainslie an account with your establishment for premiums? — They had.

Upon the settling of this matter of the policy for 2,000*l.*, did you give a check to Messrs. Howden and Ainslie, deducting the claim you had upon them for various premiums? — I did.

Look, and tell me whether the cheque marked P, for 1411*l.* 0*s.* 10*d.*, was a cheque you gave to Howden and Ainslie's clerk? — It is.

And that is the cheque? — It is.

The difference was set off against their account, was it? — Yes.

Mr. Clarkson. That cheque, my Lord, is lettered F.

Lord Chief Justice Tindal. We have had this before.

Mr. Clarkson. Yes, my Lord.

(*A cheque dated January* 10, 1840, *on Glyn & Co., of* 1411*l.* 0*s.* 10*d. signed I. S. Cooper, John Sheppard, and Benjamin Green, was put in and read.*)

MR. CHARLES LEWIS BAHR, sworn.

Examined by Mr. Bodkin.

Are you in partnership with Mr. Behrens, in Liverpool? — Yes.

Are you ship and insurance brokers? — We are.

Look at that policy (handing a paper to the witness); we will mark that No. 1. It is not marked at present. Did you effect the insurance mentioned in that policy? — The firm did.

For whom? — Mr. Wallace.

Which Mr, Wallace? — Mr. Michael Wallace.

Did you see Mr. Michael Wallace on the subject of such insurance at Liverpool? — I did see him myself.

More than once? — Yes, more than once.

Did you ever see the person "Loose," who is mentioned as the captain or master of the vessel? — I cannot recollect; he was in our office, but I cannot recollect the captain. He was in our office.

How do you know it was "Loose" who was there? — Because my partner told me.

Was Michael Wallace there at the time? — No, not that I know of.

Did you claim under that policy as for a total loss at any time? — Yes, I did.

When was that? — I have some letters; I cannot give you the date.

You may look at the letters to refresh your memory. About what time was it? — Somewhere in January or February.

1840? — Yes; last year.

Did you receive the amount of the policy? — Not the whole; we received only 500*l.*

What is the amount of the policy? — 650*l.*

You received the 500*l.*? — Yes.

Who did you pay it to? — To Mr. Michael Wallace.

Did you make any claim for the 150*l.*? —I did.

The captain's insurance? — I did.

Who desired you to do that? — Mr. Wallace.

You say that was not paid? — It was not paid.

Did the Company refuse to pay it? — Yes, they refused to pay it: we gave the policy up to the Company because we thought it was not right. Mr. Wallace spoke to me at the time, that he wanted an insurance for 150*l.* for the effects; and we made enquiries on which we thought we might depend, and so we gave up the policy.

What was it Michael Wallace told you? — To insure 150*l.* on the captain's effects; and when we claimed the 150*l.* the Directors of the Company told us—We made enquiries—

Never mind what they told you; but you gave the policy up without pressing for payment? — Yes.

Cross-examined by Mr. C. Phillips.

Had you ascertained that "Loose" was dead? — No.

Mr. Wallace sent you some documents stating that he was dead, so that you made no claim? — No, not on that account; we made a claim.

Re-examined by the Attorney General.

Was it on account of "Loose's" death? — No; because we understood that the effects were not on board; that he had not effects on board to that amount. But the letters would speak for themselves.

The Attorney General. Now, my Lord, we have got through all the policies. I will just call a witness to prove the handwriting to the bills of lading.

Mr. J. Frost, sworn,

Examined by the Attorney General.

Did you know Captain Loose, the master of the Dryad? — Yes.

Have you seen him write? — Yes.

Look at the signature of these bills of lading, and tell me whether you believe them to be the handwriting of Patrick Wallace; and tell me whose handwriting you believe the signature to be. — Captain Loose's.

The Attorney General. We have read one of these for 680*l.*; the bill of lading in respect of that, but we did not read that in respect of the Alliance or the Marine.

(*A bill of lading marked D, dated 20th August, 1839, and signed "Edward Loose," was put in and read.*)

The Attorney General. All these three policies upon goods do specify the goods in the body of the policy. The three on the goods are one by the Alliance, one by the General Maritime, and one by the Neptune, and in each and every one of these in the body of the policy the goods are specified.

(*Another bill of lading, marked M, dated Liverpool, 15th August, 1839, was put in and read.*)

The Attorney General. Now we have read the bills of lading on all these three policies.

Now just look at that bill of lading and see if that is signed by Captain Loose. It is the bill of lading of Zulueta and Co.? — By Captain Loose.

(*The bill of lading marked I I, dated Liverpool, 5th September, 1839, signed "Edmund Loose," was put in and read.*)

The Attorney General. Your Lordship is aware that these are the goods covered by the 3,000*l.* policy. Now I will call Mr. Peter Kelly.

MR. PETER KELLY, sworn,

Examined by the Attorney General.

Are you a clerk of Zulueta and Co.? — I was.

When did you enter their employment? — In the year 1831.

Where did they carry on business? — In Liverpool, and also in London.

Which establishment did you belong to? — To the one in Liverpool.

How long did you continue in their service in Liverpool? — Upwards of nine years.

Were they exporters of goods to Cuba? — Yes.

Do you recollect their freighting the brig Dryad in the summer of 1839? — Yes.

How many clerks were there in the Liverpool establishment of Zulueta and Company? — About four.

Were you the shipping clerk? — And also managing clerk.

Do you recollect the Dryad being freighted? — Yes.

Did you see her? — Yes.

Where was she lying? — At a dock called the George's Dock.

At Liverpool? — Yes.

Did you know Captain Loose? — By sight.

You became acquainted with him then as the master of this vessel? — Yes; I recognised him.

Did he come to your counting house ever? — Yes; several times in the way of business.

And were you on board the Dryad from time to time? — Yes; during her loading.

Did you know Michael Wallace? — Yes; I knew him as owner of the vessel.

I mean Michael Wallace, the owner or part owner of the vessel? — Yes.

Did you see him at Liverpool while the vessel was loading? — I did.

About what time did the vessel begin to load? — To the best of my recollection sometime in August.

How soon did you see Michael Wallace? — It was in the course of the loading of the vessel that I saw him.

Did you see him on board the Dryad? — I cannot say that I did.

Had you any conversation with him at all? — No nothing, only upon the subject of despatching the vessel.

Had you any conversation with him about despatching the vessel? — The only conversation I recollect was, he requested me to despatch the vessel.

Can you tell about how long he was at Liverpool at that time? — No.

Did you see him more than once? — Yes, I saw him two or three times.

At intervals? — Yes.

At intervals of some days? — A day or two, perhaps.

Was the ship put up as a general ship for Cuba? — She was advertised for Cuba.

Did any goods offer for her besides Zulueta's own goods? — No.

Did you see the goods on board that Zulueta and Co. sent on board? — Yes.

Look at that bill of lading: is that a bill of lading for the goods (handing a paper to the witness)? — Yes.

Whose handwriting is the body of it in? — The handwriting of a young man, the shipping clerk, under my directions at the time.

A clerk in Zulueta's house? — Yes.

And made out according to your directions? — Yes.

Does that bill of lading contain the goods that were shipped by Zulueta and Co. on board the Dryad? — Yes, it does.

The whole of them? — Yes, the whole of them.

By Mr. Clarkson. What are the letters upon them? — I. I.

By the Attorney General. About how long time was taken in putting those goods on board? — About a week, to the best of my recollection.

Was the ship still lying at the quay? — Yes, she laid close to the quay. She had not what we term a quay berth.

Were they sent in carts to the Dryad? — Part of them were.

And how were the others sent? — In what we term flats—lighters.

Barges? — Barges: yes.

And they were put on board? — Yes.

Can you tell us about what time. I see the bill of lading bears date the 5th September. Were they all on board on that day? — Yes, I believe they were.

Were you on board the Dryad after they had been shipped? — Yes, I was.

Were there any other goods on board besides those shipped by Zulueta and Co.? — None, that I know of.

Had you an opportunity of seeing what other goods there might be on board the ship—If there had been on board the ship thirty tierces of beef, forty-three barrels of pork, thirty-five firkins of butter, fifty crates of earthenware, six cases of flannel, each containing forty pieces; two cases of cloth, each containing ten pieces; two cases of prints, each containing fifty pieces; thirty-nine tierces of beef, fifty-two barrels of pork, thirty firkins of butter, twenty-five crates of earthenware; I do not know how many cases of cotton prints: if all these goods had been on board, should you have seen them? — I might have seen them.

Could all these goods have been on board without your perceiving them? — I did not see any other goods than those already mentioned in the bill of lading of Zulueta and Co.

When was the last time that you were on board, according to the best of your recollection? — A day or two before she sailed.

And at that time did you see any goods on board besides those belonging to Zulueta and Co.? — Not any.

Suppose any goods had offered from your advertisements, would an order have been required for receiving them on board,

or how would they have been received? — Yes, the advertisement named, previous to any goods being sent down, there must be an order from the consignees.

Mr. C. Phillips. We must have the advertisement.

By the Attorney General. According to the course and practice at Liverpool, if any other goods had offered for the Dryad, how would they have been put on board? — In this case they could not have been put on board without an order of the consignee.

Who do you call the consignees? — Zulueta and Co.

Why do you call Zulueta and Co. the consignees? — They had the management of the vessel, her outward freight. They had nothing to do with the homeward freight.

They had the whole of the vessel outwards? — Yes.

If any goods had been offered from any quarter, they could not have gone on board without an order from Zulueta & Company? — Certainly not, according to the advertisement.

Was it part of your duty to see that no goods were put on board except according to the orders of Zulueta & Co.? — It was; if I saw any other goods on the quay it would have been my duty to mention it to my principals.

Or if you had seen any other goods in the ship's hold? — Yes.

Did you see any? — Certainly not. I saw no others than those already named.

Did Michael ever apply to you for leave to put any goods on board? — No.

Or the master, Captain Loose. Did he ever apply to you to take any goods on board except those from Zulueta & Co.? — No.

You have heard the enumeration I have made of those various quantities of provisions and cases of dry goods—would these occupy a considerable space? — Not a great deal, from the number of them.

Suppose they were worth 2,666*l.*, would they occupy a small space? — It entirely depends on what goods they were.

I am putting pork and beef, and crates of earthenware, to the value of between 2,000*l.* and 3,000*l.*—would they occupy a small or a large space? — Earthenware would occupy a very large space.

Would tierces of beef and pork, and firkins of butter, occupy a considerable space, to the value of several thousand pounds? — The value of a tierce of beef is generally considered at 5*l.*; it would not occupy a space of anything like earthenware.

Eighty-eight crates of earthenware? — Would occupy about eighty tons.

About a ton a crate? — Yes; that is the size of the crates generally sent to Cuba—about a ton each.

Eighty tons? — Eighty tons.

Now, sixty tierces of beef, ninety-five tierces of pork, seventy-three of butter besides—about how many tons would they occupy? — A tierce of beef, I suppose, may be about a fourth part of a ton, to the best of my judgment; but I am not competent to speak to the exact size—I never saw one measured.

Ninety-five tierces of pork—how many tons? — Something less. I cannot exactly say the exact measurement; perhaps five to a ton, tierces of pork.

Butter? — Butter takes very small compass; what are called kegs of butter.

Cannot you give us a notion, from your experience, of how many tons would be occupied by the beef, the pork, and the butter? — If you will allow me to see the document perhaps I may form some rough guess at it.

Take the bills of lading in your hand (the witness refers to them)? — Those might have occupied about ninety tons of space; the earthenware would occupy the greater portion.

When you were last on board the Dryad, could there be ninety tons on board not belonging to Zulueta and Co. and you not perceive it? — I should scarcely think there could.

By Lord Chief Justice Tindal. You have looked at the three bills of lading? — Yes; there are eighty-eight crates of earthenware.

By the Attorney General. That would be about eighty tons by itself? — Yes.

How many tons of provisions of beef, and pork, and butter? — Making altogether about ninety, I should say.

You gave me eighty for the earthenware, how much would be occupied by butter, pork, and beef? — About fifteen tons, I should suppose.

That would be about ninety-five tons? — About ninety-five tons, I should think.

By Lord Chief Justice Tindal. What was the tonnage of the ship? — The tonnage of the vessel was two hundred and four; but she would carry considerably more. I suppose she would carry between three and four hundred tons.

By the Attorney General. Did you see where Zulueta's goods were stowed away? — Yes, I did.

Did they fill the ship? — No.

What proportion of the ship remained? — I should say about one-third.

Were Zulueta's goods sufficient to fill two-thirds of the ship? — That I cannot exactly say; but about that, I dare say.

Were Zulueta's goods, in your judgment, sufficient to fill up the ship, as she appeared to be filled, when you last saw her? — I should say that they were.

Suppose no other goods to have been on board except Zulueta's goods, were they sufficient to fill up to the extent of two-thirds, as you saw her? — In my own opinion I thought they were.

And is that your opinion now? — Yes, it is.

Were you present when the captain made his declaration at the Custom House? — Yes.

Was that after the bill of lading had been signed? — I am not certain as to that.

Is it usual for the declaration to be made after the bill of lading is signed or before? — It is quite immaterial. Vessels often clear the Custom House, and it is done afterwards.

Is it usual for a declaration to be made till the loading of the ship is completed? — I cannot say that it is; generally a vessel is loaded, before they clear her at the Custom House.

Can she be cleared at the Custom House, till the master has made his declaration? — Certainly not.

That is the act of clearing her? — That is the act of clearing her.

Then, according to the usage, after the master has made his declaration, are any other goods taken on board? — Sometimes they are.

If more goods are taken on board after the first declaration, is there a fresh entry? — Yes, there is.

Must there not be? — There ought to be.

Was there any second entry made respecting the Dryad? — Not after she first cleared.

Were you on board after she first cleared? — I am not confident as to that. I was down the day she sailed, but I do not believe I was on board after she cleared.

The last time that you saw her she was only about two-thirds filled? — To the best of my judgment.

And she was in that state the time the entry was made? — Yes, at the time she was cleared.

No other goods offered? — No other goods offered.

Did you know the mate whose name was Maxwell? — I didn't know him at the time, I have known him since.

Do you recollect his coming to the ship? — Yes, I do.

How long was that before she cleared? — I do not know whether she had cleared at the time or not; he waited upon me the day before, or a day or two, before she sailed. Two days before she sailed I think it was.

Had you been on board down to the time when the mate came? — Yes, I had. I think there was one mate before this Maxwell.

I am speaking of the mate Maxwell; at the time that he came, she was filled two-thirds as you have described? — Yes.

Cross-examined by Mr. C. Phillips.

When did the ship come into the dock, or into the port of Liverpool? — I think she came in the early part of August.

Are you sure it was not in July? — I cannot answer that: it may have been in July.

Can you tell us about when the lading of her was finished? — Some two or three days before she sailed.

Can you give us the date? — No.

You say you were on board till the mate Maxwell came? — I was in the habit of going down.

You do not mean to say you were on board night and day? Certainly not.

Now your employers, we understand, had chartered this vessel? — They had.

Therefore, if any goods were put on board to their knowledge, freight must have been paid to them for the goods? — Certainly, they were justly entitled to it.

Therefore, if any party wished to ship goods on board, so as to avoid the just payment to your employers of the freight, they must do that clandestinely? — True.

Are there what are called dock berths in Liverpool? — There are.

Did Captain Loose take a dock berth? — He did not; she had what we term a stage berth in Liverpool.

So that you must approach her by boats? — From one side, but from one side you would go from the quay.

But from one side you could approach her by boats? — Yes.

There was access to her, if I understand you rightly, from the

open river on one side? — No; there was no access from the river.

However, boats might approach her at night; might they not? — Lighters, which were putting crates of earthenware and other things on board, lay along side of her during the night.

When were you last down in the hold of that vessel, can you undertake to swear? — It was during the time she was taking in the salt.

I dare say it was; but as I and the Jury do not know when that was, we must try and get an answer from you. If I am to collect anything from that answer, she had things put into the hold after you saw the hold? — It is a matter of course.

It is not a matter of course. I am not questioning whether you did your duty or not, but as to the fact. Things were put into the hold after you had been in the hold, were they—is that so? — Certainly.

Is it customary to ship, occasionally, to the place to which she was going, earthenware? — Yes, it is.

Now, how many days before she sailed, will you undertake to swear positively you were down in the hold? — It may have been five or six days. I cannot undertake to swear.

Or ten days? — No; it might be a week, it could not be ten days.

Now, I ask this as a matter of fact from you, not justifying it in any way:—But is it not customary at Liverpool sometimes to ship goods on board ships in fraud of the persons who have chartered, so as to smuggle them without freight? — It has never come to my knowledge. It may have been done.

Will you repeat your answer? — It may have been done; but it has never come to my knowledge that such has been done.

If you knew of it, of course it would be your duty to your master to prevent it, would it not? — Certainly it would.

So that from you, of all others, it would be wise to take care to keep it from your knowledge, if a man wanted to commit this fraud? — It would not be to his interest to let me know it.

I should think not. Now will you have the goodness to tell us, how often you saw Michael Wallace during the time that this vessel was loading? — Two or three times; I cannot exactly say the number of times.

Nobody can expect you would. Will you undertake to swear you have not seen him half a dozen times? — No, I would not

swear anything of the kind. I may have seen him half a dozen times.

Or a dozen? — That is not likely; I never saw him a dozen times.

Did he go on board occasionally? — I never saw him on board.

Was he with Captain Loose occasionally? — I saw him twice with Captain Loose.

Do I understand you to swear, that it was not very possible that after those bills of lading were made out, other property might not have been put on board the vessel without your knowing anything at all about it? — It might have been put on board clandestinely.

If a considerable quantity of paint was put on board, not included in that bill of lading, that must have been done without your knowledge. If these were not contained in the bills of lading, must they not have been put on board without your knowledge? — There are ten kegs of paint mentioned there.

But supposing a larger quantity? — Then they must have been put on board without my knowledge.

Did you put any kegs of paint yourself on board that are not contained in the bill of lading? — No.

That you swear positively? Yes.

In the manifest? — I do not know. The bill of lading and the manifest are here. Ten kegs of paint went down which are in the bill of lading.

And no new entry for them? — No new entry.

Therefore it may happen that goods may be put on board without a second declaration? — It may.

There was no new entry of those ten kegs of paint you speak of? — No.

Just attend to me; were there not fifteen kegs of paint and some hardware put on board after the declaration? — No; I do not know whether it was 10 or 15, but it is in the bill of lading.

You were examined before on this business? — I believe I was.

You believe it! do you not *know* you were? — I was.

Then, I ask, were there not 15 kegs of paint and some hardware put on board after the declaration? — I believe there were; the bill of lading will speak to that.

Did you yourself not take them on board after the declaration? — No; I did not.

Did you see them taken on board? — No; I ordered them on board.

You have told my friend that when goods are put on board after the declaration, and not included in it, it was usual to make a new entry? — To make another clearance at the Custom House.

Did you do so on this occasion? — No.

They would go off then to Cuba, or wherever it was, without paying the outward duty? — No. They were so trifling it was scarcely thought worth while to take the trouble of clearing the vessel again.

The fact is, that, trifle or not, they did not pay any duty? — —No.

Re-examined by the Attorney General.

Down to what time did you try to get goods to fill the Dryad up entirely for Zulueta and Co.? — Down to the last moment.

According to the best of your recollection, when were you first on board this vessel, the Dryad? — Immediately when she commenced taking in.

When do you think she began taking in? — I have not got the dates, and I cannot answer the question.

We will say the 15th of August. — I cannot speak with any certainty as to the date.

The 15th of August is more than three weeks before she sailed? — She had nothing in her then.

You are sure of that? — None of our goods at that time.

Do you think she had any thing in her on the 20th of August? — I cannot speak with any certainty as to the date.

Do you think she had any thing in her on the 20th of August? — She may have had.

What may she have had? — She could not have had any thing but the earthenware or the salt.

Down to the 20th of August, could she have had any but those goods you had sent on board? — It is not at all probable; no goods could go on board before ours.

The Attorney General. Your Lordship is aware that the dates of these bills of lading are the 15th and 20th of August.

Mr. C. Phillips. They will speak for themselves.

By the Attorney General. Look at that paper; what paper is that? — That is a notice of an intention to enter the vessel for the loading of goods.

At that time had any goods been loaded on board? — No.

The Attorney General. This bears date the 15th, my Lord, and up to that time the witness says no goods had been loaded on board.

That is your own notice? — It is not my writing, but it was written by my directions.

That was the notice to load? — Yes.

Was it not some days after that, before the loading began? — It may have been two or three days.

With regard to the place where the ship the Dryad lay, was that in a dock with a gate? — No: there is no gate to the dock.

None on the land side? — None on any side.

You stated to my friend, Mr. Phillips, that there was no access to the place where she lay from the river? — No, you cannot bring the goods into the docks there, the same as you do in London. They are wet docks, and the earthenware and salt goods go in lighters, and other goods come from the quay.

How long would it take to put on board 88 crates of earthenware? — A day or a day and a half. It would take a day at least.

A day of how many hours? — Eight or nine working hours.

Would it require the use of tackle to get such goods on board? — Yes.

And it would require a good many hands? — Yes, it would.

How long would it take to put the butter, the pork, and beef on board? — Two or three hours, perhaps.

Had you an opportunity of seeing the state of the hold till within a few days before she sailed? — Yes, I could see the hold from the main hatchway.

Without going down into the hold? — Yes.

Had you that opportunity, within what time before the ship sailed? — Within three days; two or three.

Down to that time you still expected, you tell me, to get goods to fill up the ship? — Yes.

Should you have taken any goods that offered? — Certainly.

Down to the time of her sailing? — Yes.

Mr. Thomas Sherlock sworn.

Examined by Mr. Clarkson.

Are you the Clerk and Examiner in the Long Room in the Customs at Liverpool? — For the clearances I am.

Do you produce a bill of entry of cockets, and the declaration

of the master of the Dryad, as to the nature and quantity of goods on board on her passage outward? — I produce the entries.

Are these the entries? — Yes.

Mr. Clarkson. They are marked X X X, my Lord.

Are they entries and declarations? — They are.

Now what is that which you hold in your hand? — This is the master's declaration.

Look at the entry first? — These are the copies of the entries that are made.

From your books at Liverpool? — They are original copies brought by the merchants.

Mr. Clarkson. The entries are not marked at all, my Lord. There are three of them. They may be marked severally No. 2, my Lord.

To Mr. Frost. Look at the subscription to that declaration. Is that the handwriting of Captain Loose? — It is.

To Mr. Sherlock. The entries are made before the declaration? — Yes.

To Mr. Kelly. Is the signature, Peter Kelly, to these entries your handwriting? — Yes.

(*An Entry, dated 24th August,* 1839; *another of the same date; and another dated* 16*th of August,* 1839, *were put in and read.*)

To Mr. Sherlock. What is the duty per cent. on earthenware? — Ten shillings per cent.

Salt? — Salt is free.

And provisions? — Ten shillings.

So that the exportation of a hundred pounds worth of goods would come to ten shillings? — Yes.

Did you know the Dryad at all? — No.

(*A Declaration, signed by Edmund Loose, dated the* 28*th of August,* 1839, *was put in and read.*)

Are those three entries that have been read, entries of everything that was represented to the Custom-House at Liverpool as being on board the Dryad before she sailed? — Yes.

Do you know the situation of the Wet Docks at Liverpool? — I do.

The George's Dock? — The George's Dock.

How are those docks secured at night? — They are not walled docks. It is not at all secured at night.

We have heard from the last witness that they are not open to the river? — Except at high water, when the gates are opened.

Except at high water the gates are not opened ? — No.

If the gates are not opened is there any access for boats to come from the river into the dock to load any vessel ? — None whatever.

So that a day and a half's work in loading a vessel with smuggled goods could not be done ? — I should suppose not.

Unless they were to take the opportunity when the water was at high tide and the gates open, it could not be done at all ? — Not by boats.

Who attends to the gates ? — The dock gateman.

I suppose it is necessary to watch the dock, to see what goes out as well as what comes in ? — They are all attending there.

When things are coming into the dock ? — There is always something coming in or going out at high water.

And the officers are on duty to see what it is ? — Yes.

Cross-examined by Mr. C. Phillips.

So that it would be utterly impossible to smuggle anything at Liverpool, they are so strict ? — I say nothing about that.

Do you not think there is a great deal of smuggling going on there ? — No, I do not think there is ; I have no reason to suppose so.

Suppose the Dryad was where there are no gates at all, could not lighters approach her ? — She was in a dock where there were no gates.

Supposing it to have been sworn to-day that there were no gates ; that she was inclosed in no gates, could not lighters have come to her ?

Mr. Justice Bosanquet. There never could be a dock without a gate you know.

By Mr. C. Phillips. You have been asked about the duty, which you say is a half per cent. ; be good enough to tell us what the freight would be to Cuba ? — I do not know.

Much more than the duty ? — I dare say it would.

Lord Chief Justice Tindal. It was three hundred pounds, a lump sum for this vessel.

By Mr. C. Phillips. Be good enough to look at these two documents, the bill of lading and the declaration, and tell us how they correspond, or whether they do not totally differ, just look : and I think you will find but two articles in the bill of lading ?

The Attorney General. They will speak for themselves.

The Witness. These contents are agreeable to the cockets.

Be good enough to tell me in the first place, what you call those two documents you have in your hand? — This is the declaration.

And the other, the bill of lading? — I suppose so, but it is a document I do not know anything about.

Look at them and tell me whether they in any way correspond? — They are more particular; I cannot say they do not correspond, for there are forty tons of castings here. It is impossible for me, and it is no part of my duty, to say that.

Lord Chief Justice Tindal. This officer of the customs would not see the bill of lading.

Mr. C. Phillips. I dare say they will produce some witness who will make them coincide, but your Lordship will observe in the bill of lading there are six copper clarifiers, how can they come under the head of iron castings?

Re-examined by the Attorney General.

You have looked at the entries and the master's declaration, and they correspond? — Yes.

With regard to the bill of lading and the declaration, do you see any discrepancy? — We have nothing whatever to do with bills of lading.

The Attorney General. My Lord, we close this head of evidence and now propose to engage upon the voyage; but if we call the mate it will go to a very late hour I am afraid.

Mr. C. Phillips. We might get through the mate's testimony to-night; I do not think he will go through any very long cross-examination, and it would be better to get through it to-night.

The Attorney General. We will call a witness who will not take so much time.

CAPTAIN ALFRED JOHN TAIT sworn,

Examined by Mr. Clarkson.

In the year 1839 were you the master of a vessel called the Bencoolen? — I was.

Where were you bound? — To Cape Hayti.

From where? — From La Guiana.

On the 23rd October in that year, 1839, was the Bencoolen off the harbour at Port Hayti or Cape Hayti? — She was.

Was yours a large vessel? — 402 tons.

When you were off the harbour did a pilot come on board you? — There did.

You were boarded by a pilot-boat? — I was.

Was there one, or more than one pilot, came on board of you? — There were three pilots in the boat.

How many came on board of you? — They all came on board.

Is there a reef of rocks anywhere in that neighbourhood? — There is.

About how far from the spot were you, when the pilots boarded you? — About two miles and a half or three miles.

Did you at any time observe a brig to the eastward of you? — I did.

Was that the brig, that afterwards turned out to be the Dryad? — She was.

Captain Loose? — Yes.

Now, you say there were some reefs about two miles and a half off out,? — Two miles and a half from where I was when I was boarded by the pilots.

In what direction was that brig going: in the direction to the reefs? — She was to the eastward of me, and steering right stem on to the reefs.

Are those reefs laid down upon the charts, and well known to mariners? — They are.

Take the chart into your hand (handing it to the witness). Do you find it laid down on that chart? — They are on a very small scale in this chart.

But are they laid down there? — They are.

Tell us whether there is a bank anywhere thereabouts, called the Silver Bank? — There is.

And are there reefs, called the Silver Keys? — These are the Silver Keys (pointing them out); but it was not there I saw the vessel.

What are the reefs called that you are speaking of; that you say he was going straight for? — A reef right off the harbour's mouth.

Just put your finger upon them? — They are marked down there (pointing them out).

How far from the harbour's mouth are they? — They form the outside part of the harbour, and then they extend, I should think, about fifteen miles down to the eastward.

Was the direction that the brig was taking the subject of remark on board of your ship? — It was.

Did you wait for any time to see whether she would alter her course? — We did.

Did she alter her course at all? — She did not.

I believe the pilot on board you, made a remark to you upon it (you must not tell us what it was)? — He did.

Seeing the state in which she was, and having waited for some time, and seeing she did not alter her course, did you take any step in order to call the attention of the master of the brig to his state of danger? — I did.

Did she pay any attention to your gun? — No.

Still went on? — Still went on.

Finding that she did not answer your signal, or take any notice, did you give any directions to the pilot on board? — I did.

What were the directions you gave him? — I ordered him to go away in his boat directly, and board the vessel as quick as he could.

Why did you order him to do so? — Because he told me—

I do not ask what he told you; but from your observation what was your reason for ordering him to go?

Mr. Doane. I apprehend, my Lord, my friend cannot ask this.

Lord Chief Justice Tindal. One foresees the answer; it follows as a necessary consequence from what he has said.

By Mr. Clarkson. Did the pilot pull to her? — He did.

And boarded her? — He did.

Now, until after the pilot had boarded her, did she at all alter her course? — She did not.

Then, what course was she still going, up to the time when the pilot boarded her? — Steering right in the direction of the reef.

Do you recollect how the wind was blowing at that time? — It was a light westerly wind; just before the land breeze—the sea breeze—set in. I know the wind was very light.

Was she at all carried in a direction to the reef by the wind? — Yes; she was under sail, sailing off for the reef.

But from the direction the wind was blowing in, would that have any effect in forcing her towards the reef, or could she have avoided it? — She could have avoided it; of course she could.

When the pilot went on board she altered her course did she? — She did.

And then came up into the harbour? — She did.

After you were both in the harbour, did you see Loose on shore? — I did.

You say the Silver Keys were not the reefs on which you saw her going? — No.

Did Captain Loose, when you got on shore, say any thing to you about the Silver Keys?

Mr. Doane. Does your Lordship think this is admissible?

Lord Chief Justice Tindal. If it accompanies any act; otherwise it is only narrative.

By Mr. Clarkson. Did you observe whether the rudder had been unshipped on board this vessel? — Loose told me it had been.

You were afterwards on board? — Yes.

Did you observe that it had been unshipped? — Yes.

And that there had been a jury rudder made? — Yes; I did.

Did you observe that she had carried away her gudgeons and irons? — Yes, I did.

Do you remember a day or two afterwards being required to attend a survey on board of this vessel? — I do.

Was there a gentleman there who officiated as Lloyd's agent? — There was.

Was the brig surveyed and certain repairs ordered? — She was.

How long did you remain in port? — In Cape Hayti?

Yes? — I remained about seven weeks or eight weeks.

Did you meet Captain Loose at any time during those seven weeks? — I did; but he was not there seven weeks.

He was there about a fortnight was he not? — Yes; about a fortnight.

Did you see Loose frequently during that fortnight? — I did frequently.

How frequently? — I should think I saw him almost every day; there was scarcely one or two days in the week that I did not see him.

Did you have any conversation with him about the brig? — I did.

And where she had been? — Yes.

And what had happened to her? — Yes.

Did you learn from the declarations or conduct of the captain, what effect your sending the pilot on board had produced upon him?

Mr. Doane. Really this will not do.

The Attorney General. We must take your Lordship's opinion upon this. We apprehend that if Captain Loose were now

standing on his trial, any thing he said would be admissible in evidence; we are to make out his guilt.

Lord Chief Justice Tindal. That is, it would be admissible against *him*, but not against the accessory.

The Attorney General. Yes, my Lord. We must shew him really guilty; and we must shew *aliunde* that the prisoner, Patrick Wallace, was an accessory. Our first position is, that Loose was guilty. What we wish to take your Lordship's opinion on is, whether we are not at liberty, for that purpose, to give in evidence whatever tends to prove Loose guilty; whether a declaration of his would not be evidence; that is one point. But another point is this—Whether a declaration by him, not after the whole transaction, but during the voyage, as to what he had done and meant to do during the voyage, would not be admissible? I neither suggest nor hint what the evidence might be; but suppose, my Lord, he had said anything about the Silver Keys, or about his future intentions, would not that be evidence? At all events, we conceive that what he said during the voyage, respecting the voyage, and respecting what he had done, would be admissible.

Mr. Clarkson. Does not your Lordship think it our duty to shew first of all (otherwise we cannot expect to produce any effect as regards the accessories) that the offence itself was committed? If your Lordship looks at the indictment you will see that it points out the person by whom it was committed. Can it be said that, under such circumstances, we are not at liberty to prove the commission of the offence by any evidence which is applicable to the principal in the transaction? Suppose, for instance, the party had admitted that he committed the offence, does not your Lordship think we should be in a situation to prove it? There has been no offence committed by the persons charged as accessories, unless the body of the crime has been committed by the principal. Therefore it would seem to impose an impossibility upon us if your Lordship says, "You shall not charge a man with having incited another to commit a crime—you shall not convict him unless you show that the crime was committed by that other; and yet you shall not be allowed to show that that other did commit the crime." Whether we show the guilt of the principal by his acts or by his declarations, seems to me, with great submission, to make no difference. I admit that it will go to the extent of having conversations of Loose himself upon the subject during the voyage. What better evidence

could we offer against Loose? And if the Act of Parliament entitles us to treat Loose as if he were present, what right does it give the prisoners here to say, You shall not prove that, without proving which, you shall not make out a case against us?

Lord Chief Justice Tindal. The line is a very intelligible one. You have no right to give any evidence against the prisoner that rests solely on declarations made by his principal. You have a right to give in evidence all those conversations of the Captain which accompany acts done, for they form part of the *res gestæ*. The ground of the offence is, that the Captain lost this ship with the bad intent of defrauding certain persons. You cannot tell what his intent was, without learning what his declarations were accompanying an act done; for the act itself might be equivocal. I think you are strictly bound by that, and that you ought to be limited to such conversations, as accompany and make intelligible the acts the party does during the voyage.

Mr. Justice Bosanquet. If they were both standing at the bar, one to be tried as principal and the other as accessory, the declarations of the principal would not then be evidence against the accessory.

Mr. C. Phillips. The case of the King v. Turner decided that, my Lord.

Lord Chief Justice Tindal. If the captain were here, and were being tried on this indictment, we could not keep out of the case the declarations of the captain, even if they accompanied no act, for they would be evidence against him; but we should be bound to tell the jury not to take those declarations further than as evidence against the principal.

Mr. C. Phillips. In the case of the King v. Turner it was ruled that the admission of the principal that he had stolen the goods, was not evidence.

By Mr. Clarkson. Did you see anything of Captain Loose at the time the survey, or the repairs in consequence of the survey, were going on? — I saw him on the day of the survey.

Did he make any observations at all in the course of the survey, as to the consequences of the want of repair that the vessel exhibited? — Yes; he made observations.

From time to time while you were surveying the vessel? — Yes.

What did he say?

Mr. C. Phillips. No, that will not do—if my friend calls the survey an act done by the captain.

Lord Chief Justice Tindal. If he is going on to give an account

of something that took place a week or a fortnight before, that comes within the rule just laid down.

By Mr. Clarkson. Did you afterwards see, or at any time after you got on shore did you see, the mate Ronald Maxwell? — I did.

How soon after you came on shore? — I should think about eight or nine days, to the best of my recollection.

Did he apply to you for a berth? — He did.

Did he give any reason why he applied to you for a berth, at the time he applied to you?

Mr. C. Phillips. The mate is not charged in any way, suppose he did give a reason.

Mr. Clarkson. I only want to have the fact whether he did give a reason.

Mr. C. Phillips. You can ask himself.

The Attorney General. We may have it that he assigned a reason, without asking what the reason was.

Lord Chief Justice Tindal. He may have given a reason that he thought the captain was guilty.

Mr. Clarkson. I have not ventured to ask what the reason was.

Did you meet the captain at Killick's with the mate? — I did.

Did the captain pay the mate his wages? — He did.

And discharged him? — And discharged him.

You say he applied to you for a berth? — Yes.

Did you ask him a reason? — I did.

Did he give you a reason? — He did.

Upon his doing so, did you give him a berth? — I did.

Did you see any others of the crew besides the mate? — Not on shore I did not.

But on board? — I did.

Did they make any complaint to you? — In my hearing they did.

In your hearing? — In my hearing they did.

Do you remember the brig leaving to proceed to Cuba after her repairs? — I do.

That was about a fortnight after she came in? — It was between a fortnight and three weeks, I think.

The day after she left did you see Colonel Bellason, the Colonel of the port? — I did.

Did he make any remark to you? — He did.

How soon after that remark of the Colonel's did you hear anything had happened to the Dryad? — I think it was three or four days.

And then did you hear of her loss? — I did.

When you were surveying her for her repairs, did you see the state of her hold? — I saw down the after hatchway.

About how full was she of goods? — I could not say; but from what I saw I should think she was about two-thirds full.

When you were on shore, when the brig came into the port, was the log ever shown to you? — Never. The log-book, you mean.

Yes? — No, I never saw it.

Or anybody else, that you know of? — No, not that I know of.

Now, from what you saw of the course of the vessel upon the reefs, to signal her against which, you fired a gun, did it appear to you she had an opportunity of avoiding them long before she did? — Of course she had; she had no business there at all.

Was there anything in the state of the weather, that you could see, or from the management of your own vessel, that could lead her there by any misfortune? — Nothing.

The Attorney General. We shall recall this witness, when we have shown what course the Dryad actually did take. I gave my friends full notice, that we propose to ask the witness what was the proper course for her to have taken. We shall not at all propose to re-examine him as to these facts.

Cross-examined by Mr. Doane.

Do you know this mate very well? — He has been with me about nine months.

Did you see him here to day? — Yes.

Was he the person who was taken out of Court to-day? — I do not know.

Do you know his voice? — Yes.

Did you not hear him? — I heard some disturbance.

Was not that his voice? — Yes, I think it was.

Re-examined by Mr. Clarkson.

Did it appear to you he was tipsy? — I should think the man was tipsy; or he would not have come in here in that way.

Who made him so, or whether he made himself so, you do not know? — No.

Adjourned to to-morrow morning, 10 *o'clock.*

AT THE CENTRAL CRIMINAL COURT,

March 4th, 1841.

RONALD MAXWELL, sworn.

Examined by the Attorney General.

Did you sail as first mate of the Dryad on a voyage from Liverpool to Santa Cruz? — From Liverpool, bound to Santa Cruz.

Who engaged you? — Captain Loose.

Where? — In Liverpool.

When did he engage you? — On the 4th of September, 1839.

At Liverpool? — At Liverpool, on board the Dryad.

To go this voyage? — Yes.

From Liverpool to Santa Cruz and back? — From Liverpool to Santa Cruz: from Santa Cruz to St. Iago da Cuba, and from there to Swansea. That was my understanding when I engaged.

Have you been brought up to the sea? — I have.

Have you commanded a ship? — I have.

In what trade? — In the South American trade.

Have you crossed the Atlantic frequently? — Often.

You have been to the West Indies? — Yes.

Are you acquainted with the navigation of those seas? — Yes.

Now, you being engaged on the 4th of September, were you in the hold of the ship on that day? — I was.

In what state was the cargo; what part of the cargo had been put on board? — The day that I joined her, we took in a few cases of hardware, and the day previous a few kegs of paint. That was all the cargo that came to her after I joined her.

You joined on the 4th? — On the 4th.

What goods did you take in after you joined the ship? — A few cases of hardware, and a few kegs of paint.

Do you know whose goods those were. Did you know

Zulueta and Co.? — They came down with Zulueta's bills; I signed bills for them.

As mate? — As mate. It is customary for two notes to come down along with goods to the ship; one the mate signs, and it goes back to the house, and the other is kept.

From the time that you joined, on the 4th, till the ship sailed, were any goods received except those from Zulueta and Co.? — None.

Are you sure of that? — I am quite confident; I locked the ship up every night before I left her.

Did you see her again in the morning? — Yes.

When the loading was completed, what proportion of the ship was filled, or what proportion of the hold remained unfilled? — One-third of the hold.

Remained unfilled? — Unfilled.

After you came there on the 4th, can you say whether 80 crates of earthenware were loaded on board? — No, not after the 4th, there was none.

After the 4th, can you say whether besides Zulueta's goods (I am not speaking of them) besides Zulueta's goods, were there any cases of flannels, or cases of cloth? — or cases of prints? — None.

Were there any tierces of beef, or barrels of pork, or firkins of butter, after the 4th? — None, only for the ship's use, and they were on board previously.

Did you see the hold from time to time between the time that you joined and the time the ship sailed? — Yes; every day.

Are you sure that there were not any more goods from any person brought on board after that time except what you have mentioned; the kegs of paint and those cases from Zulueta and Co.? — That was all; she was ready for sea previous to that. We found out her foremast was bad, and she was taking in a new foremast the day I joined her. It was taken out that day, and we put a new foremast in that day.

What quantity of provisions had you on board for the ship's use? — Two tierces of beef, and four barrels of pork.

Was that a sufficient quantity to carry you on the outward voyage? — Scanty.

Even for the outward voyage? — Yes.

When a ship sails from this country to the West Indies, or to such a place as Santa Cruz, is it usual for her to be provisioned for the outward and homeward voyage both, or does she buy

provisions abroad? — I have always seen, during the last 15 years that I have been at sea, a ship provisioned for the voyage out and home both.

Are you sure that this ship had not provisions for the homeward voyage? — I am sure of it.

On what day did you sail? — We went out of dock on the 6th, and anchored in the river, and sailed on the 7th.

How many hands had you on board? Ten.

Ten in all, including the Captain. Do you include the boy? — The boy and all hands.

What course did you take in going round Ireland. Did you go by the north? — Through the North Channel.

Did you fetch any light on the Irish coast? — We did: Carlingford light.

Is it usual to go by the North Channel. It is not unusual, I believe? — Not unusual; according to the wind.

Were any directions given to you about the long-boat by Captain Loose? — Yes.

What directions did he give you? — To get tackles rove and coiled in her, so that if we wanted her she might be readily got into the water.

So that if she was wanted she might be got easily into the water? — She might be got quicker.

Had you a log-line when you sailed? — No; none.

What was done for want of a log-line? — I endeavoured to replace it by making one of the spun-yarn; but I found it was quite insufficient for the purpose; it was too heavy.

Had you a proper log-line during the voyage? — No.

While you remained on board? — No; none.

Did you observe anything respecting either of the pumps? — I found the larboard pump was choked the first time I endeavoured to sound.

When did you first sound the pump and find it was choked? — A short time after we were at sea. I could not say the exact time.

Did you try to clear it out? — I did.

Were you able to do so? — No; I told Captain Loose of it when I found it was so.

What said he? — He said nothing particular. The boy was in the presence, in the cabin; and the boy came on deck to me and said—

By Mr. C. Phillips. Never mind what the boy said? — That it had been so.

Mr. C. Phillips. (To the witness.) Stop, Sir.

Lord Chief Justice Tindal. You need not be quite so loud, Mr. Phillips.

Mr. C. Phillips. He would have had it out if I had not stopped him, my Lord. I have seen this gentleman before to-day.

The Attorney General. There is nothing in his manner or appearance to-day to impeach his credit.

The boy said something which you are not to repeat. Was that in the presence of Loose? — No.

Was that pump ever made to suck? — The larboard pump?

The larboard pump? — No.

Was there a chronometer on board? — I believe there was, but I never saw it.

Did you make any application to the captain to be allowed to make use of the chronometer? — Yes.

Would the chronometer have allowed you to know the ship's course and situation at any particular time? — To know the longitude of the ship.

Would he allow you to see the chronometer? — No.

Did you pursue your course to the West Indian Seas? — Yes.

Had you ever been to Santa Cruz before? — No.

Did you know what is the proper course to be pursued for crossing the Atlantic and going to Santa Cruz? — There is generally one track laid down on the charts as a guide.

Did Captain Loose follow that track? — Part of the way he did.

Did he deviate from that track at any place? — He did.

Where? — About longitude 59 or thereabouts.

About longitude 59 west? — Yes.

How did he go out of the track—In what direction? — Steered to the northward.

Where did you first make land in the West Indies? — At Virgin Gorda.

Did you see the land there? — Yes.

The Attorney General. We have got the chart here.

Just take the chart, and point us out Virgin Gorda. (The chart was handed to the witness). — The witness pointed it out on the chart.

Do you point to it now? — Yes.

Just make a mark? — It is laid down with a "V" and "Gorda" only.

Mr. Jervis. Santa Cruz is not upon that chart.

The Attorney General. No; Santa Cruz is on this other chart.

(*The two charts were handed to Lord Chief Justice Tindal.*)

By the Attorney General. Now, you told the Captain that you had seen the land? — Yes.

What did he do upon that? — He came on deck.

How long did he remain on deck? — About five minutes.

And then what did he do? — He went below again, and said nothing.

Did you observe any breakers a-head? — Shortly afterwards I did—a low land.

Did that indicate a reef? — The breakers indicated a reef, and the low land was the main—the land of Anagada.

How far, do you think, you were from the breakers when you first discovered them a-head? — About five miles probably—four or five miles.

What did you do upon that? — I went down and told the Captain.

Where did you find him? — In bed.

By Lord Chief Justice Tindal. What time of the day was it? — In the morning.

By the Attorney General. What should you call the morning—what hour? — Between six and seven o'clock in the morning. I saw the land just at day-break.

And this was between six and seven in the morning? — Yes.

By Lord Chief Justice Tindal. Who was at the helm? — Benjamin Schultz.

The Attorney General. He is one of the seamen, my Lord, whom we mean to call.

What did you say to the Captain when you went down and found him in bed? — I told him I could see breakers a-head and low land.

Did you say anything more to him? — He jumped out of bed and followed me on deck.

Mr. C. Phillips. I will take your Lordship's opinion whether there is any act accompanying this to let in the observations made by the Captain in the absence of the prisoner?

Lord Chief Justice Tindal. I think it is evidence.

By the Attorney General. Did you say anything more to him? Nothing more below.

What did the Captain then do? — He followed me shortly after I went on deck.

Did you give any directions to the man at the helm, Schultz? — I did.

What orders did you give him? — I told him to put the helm down, to let the ship come round.

To keep off the breakers? — Yes.

The captain followed you on deck? — Yes.

What did he do or say? — He ran to the wheel, and hove the helm up again.

What effect had that upon the ship? — To keep her direct on for the breakers.

Did Captain Loose give any directions to the man at the helm, or did he say anything to you? — He was at the wheel himself then.

Did he remain at the wheel? — A short time only.

Upon that did the crew do anything? — They complained; they came into the waist—Thomas Hunter and Simpson.

Did they complain to the Captain? — Yes.

They were two of the seamen? — Yes; they said that if he did not put her round, they would take charge and put her round themselves; that they were not going to be lost.

What did the captain do upon that? — He left the wheel.

Did you give any directions then as to what should be done? — Benjamin Schultz, the carpenter, again took the wheel.

What did Schultz then do? — He put the helm down again, and the ship came round.

How near had you got to the breakers when Schultz put down the helm a second time? — The ship just cleared the breakers and nothing more; in a few minutes she would have been on shore.

What did the captain say to you, when the ship came round and escaped the breakers? — After she was round he mentioned to me that he did not think she was so near.

What did he say to those who brought her round? — He told me at first to mind my own damned business, and to take the studding sails in before she did come round.

When was it that he told you that? — When he came on deck first—when he took the wheel from the carpenter.

When the ship was brought round the second time did he make any complaint or use any threat? — He said he would have me tried for mutiny, for taking charge of the ship from him.

Did he say he would have you or them tried? — Me.

On what day was this? do you remember on what day in October this was? — The 17th.

Did you proceed on the voyage? do you remember where you were on the 19th? — Yes.

Where were you on the 19th? — On the Silver Keys.

Where is that? will you point it out on the chart (the witness did so)? — In some charts it is called Silver Keys, and in others Silver Bank.

By Lord Chief Justice Tindal. It is on the north side of the island of St. Domingo, is it not? — Yes.

By the Attorney General. Ought he to have gone to the south or to the north of St. Domingo, to reach Santa Cruz? — I considered the south the passage, to try between Antigua and Guadaloupe, which would bring us to the south side of St. Domingo. That is the way we generally go.

Is that the usual way? — The usual way.

Even supposing a ship were to go to the north side of St. Domingo, ought she to have come upon the Silver Key? should she have come so near the shore? — She ought to have been nigher the shore to have avoided it.

Is the Silver Key laid down upon all the charts? — All that ever I have seen.

Now tell us what happened when you were upon the Silver Key upon the 19th of October. What was the first thing that attracted your notice? — A rock.

About what hour of the day was that? — About half-past six in the morning, or between that and seven.

You saw a rock? — Yes.

A-head? — On the larboard bow.

How far off? — It might be about 300 fathoms, more or less, I could not say to the exact distance.

Did you mention that to the captain? — Yes, immediately.

Was he below? — He was.

Did he come on deck? — He did.

And did you point out the rock to him? — I did.

Was it easy to be seen? was it within sight so that you could easily see it? — It was easily to be discerned.

What did the Captain say? — He could not see it.

Did you see it with the naked eye? — Yes.

Did he look at it with his naked eye, or with a telescope, or both? — He had his telescope in his hand.

Was the water at all discoloured there? — Yes, a-head.

Does that indicate a shoal? — It does in those seas.

Did any of the crew soon after make any report to the captain? — Yes, one of the men from the fore-yard called out "Rocks under her forefoot."

The forefoot is the bow of the vessel? — The bow of the vessel.

What did you do upon that? — I ran forward, and likewise the captain.

Did you look over the bow? — Yes.

What was seen or done? — I saw the rock.

Was anything said? — Captain Loose said, "Oh, we are lost, we are lost, we are all lost."

Did the ship strike? — Immediately after she did.

Did she remain fast? — She remained fast for the space of from fifteen to twenty minutes.

What was then done? — Were the boats cleared out, or what was done? — We cleared away the boats; he ordered the jolly boat to be hove overboard. We put her on deck and got tackles ready to put the long boat over to save ourselves.

Did she remain fast? — After about twenty minutes she dragged off, the sails being all set and the breeze increasing.

Did you observe what injury she suffered? — She had suffered none, perceptible that time; she was making no water.

Did you afterwards discover what injury she had sustained? — She went on a short distance till she struck another rock.

How long did she remain fast upon that? — A few minutes.

Did she drag off that? — She dragged past that.

Now, where was the captain during this time while she was fast? — In the cabin.

Did you observe what he was doing? — He was putting a life-preserver on one part of the time.

Did you afterwards discover what injury she had suffered from being on the rocks? — When she dragged off the second rock her rudder was disabled.

Were the rudder pintles injured? — Two were broken, which caused the rudder to unship.

Now, the rudder being disabled, what did you do, or what did you attempt to do? — Trimmed the sails to keep before the wind.

Did you propose to make any temporary rudder? — Yes.

Did you make any application to the captain for that purpose? — Yes.

What did you apply for? — I asked him what spar he would take: having no spare topmast, whether we might take the main boom or the spritsail yard, which he refused.

There being no spare spars on board? — Yes.

When he refused to let you have either of those spars to make a rudder of, did he make any observation? — Yes.

What did he say? — That we were in a nice predicament, at sea without a rudder. That it would have been better if we had been all asleep a day or two previous, and let her go ashore at Anagada.

When did you make the coast of St. Domingo? — On the 20th.

The 20th of October? — Yes.

Did you make a temporary rudder of any sort? — Yes; the carpenter did, with the studding-sail booms, long-boat oars, and spare pieces of plank.

With which you could steer her? — It was an assistance.

On the 20th you made St. Domingo? — Yes.

What part of St. Domingo? — The harbour of Porto Plate.

How did you proceed from the 20th until the 22nd? — Close along the land.

In your judgment, would it have been proper to have had a better offing? — Yes.

Why? — We were sometimes so near as to be almost amongst the breakers.

Did it seem to you that there was danger of getting ashore there? — Yes.

Did the men do anything to be ready if they should get ashore? — They had their clothes all packed up.

Now, where were you on the afternoon of the 22d of October? — Close in with a reef that lies off the harbour of Cape Hayti.

Describe what happened at that time? — The jury rudder unshipped.

Well, what did you do? — Trimmed the sails to keep her in the wind out to sea again.

Who gave the order? — The captain.

Did the captain say anything to you? — He asked me what I thought was best to be done.

What said you? — I told him there was no danger to run into the harbour.

Was the wind fair for that? — Yes.

Did the captain consult any others as to what was best to be done? — He told me to go forward, and call David Price, who was acting as second mate, and Benjamin Schultz, the carpenter, to see what their opinion was.

Did you do so? — I did.

Did they come and give their opinion, or did you report what their opinion was? — They came on the quarter-deck, and gave their own opinion.

What opinion did they give to the captain? — That the harbour was before us, and they thought we might get in.

What said the captain to that? — He said he would not; he had no pilot on board, and if anything happened to the vessel he would lose the insurance.

What did you say to him upon that? — I told him, the only plan then was, to keep her out to sea that night; that we could replace the jury rudder very soon, and get a pilot, and get in in the morning by the time the sea-breeze set in.

When did the captain go to bed? — At eight o'clock.

Did you see any sail that night? — I did.

About what hour? — Nine.

Upon which quarter? — Upon the larboard quarter.

Did you mention that to the captain? — Yes.

Did he come on deck? — He did.

Did you say anything to him about the sail you saw a-head? — That she looked like a large ship; that she was probably a man-of-war; and that she could give us assistance if we would run down to her.

Could you have done that? — We could.

Easily? — Easily. We could have gone down before the wind to her.

Did you do so? — No.

Why not? — He would not allow it. He said he wanted nothing with her.

What did the captain do? — He went to bed again, and told me to call him at twelve o'clock.

Where were you in the morning, at daybreak? — To the south-east of the port: off the entrance to the port of Cape Hayti.

Did you see any other ship when the day dawned? — Yes.

Where? — To the northward of the port; a little to the northward.

Of what? — Of the entrance to the port.

You were then to the south-east of the port? — To the south-east of the port.

In what direction were you going? — Steering towards the reef.

Could you see the reef a-head; could you see the breakers? — Yes.

Now, about how far were they off? — Probably two miles.

Did the captain come on deck; was he on deck in the morning? — He was at seven o'clock.

At that time in what direction was the Dryad going, when the captain came on deck about seven o'clock? — Steering towards the reef. She was steering the course that he ordered when he left the deck previously.

How long before was it that he had left the deck when he gave these orders? — I could not swear to that for I was in bed.

About seven he was on deck, and you were steering towards the reef? — Yes.

Was there any signal made at that time? — From the Dryad? none.

Was there any signal made from any other ship? — Yes; the ship we saw to the northward fired a gun, and hoisted an English ensign.

Did you afterwards learn what that ship was that fired the gun? — Yes.

What ship was it? — The Bencoolen.

Captain Tait? — Commanded by Captain Tait.

Could you understand what was the meaning of firing that gun? — Yes.

What was it? — To warn us that we were running in danger. She had likewise a union jack flying for a pilot, and we had none. I was not allowed to hoist one.

Did you propose to hoist a signal for a pilot? — I did.

What said Captain Loose to that? — If they were too lazy to come off without a signal, let them stop where they were.

What was done with the Dryad; what course did she pursue? — She kept upon the same course until a pilot came on board. It was almost a calm, and she was going very little through the water.

When the gun was fired did you say anything to Captain Loose? — I did.

What did you say to him? — I told him the ship to the northward had fired a gun and hoisted a signal. He said that was nothing to him.

Any thing more? — No; I left the cabin then.

You mentioned that you went below when you heard the gun? — Yes.

And saw the signal? — Yes.

Then the pilot came on board? — Yes.

About what o'clock was it when the pilot came on board? — About 11 in the forenoon.

Till that time had the Dryad altered her course? — No.

When the pilot came on board what was done? — The captain called him aft and shewed him our Jury rudder, and asked him if he would take charge of her.

If he would take charge of the vessel? — Yes.

What more did he say? — He said he would if the crew would work the ship in—that he would take her in.

Was there any hailing before the pilot came on board? — Yes; the pilot hailed. He waved a flag on board all the way.

The pilot came from the Bencoolen? — Yes.

How far was the Bencoolen from you at that time? — Probably three miles.

Did you see the pilot-boat leave the Bencoolen? — I saw the pilot go on board the Bencoolen. Two pilots had been in the boat. One was left in the Bencoolen and the other came to us.

Did you see that other pilot leave the Bencoolen and come towards you? — Yes.

Did that pilot-boat make signals? — Yes. Waved a flag.

Did you understand the meaning of that signal? — Yes.

What was the meaning of it? — To bear down towards her.

Did you bear down towards her? — No.

Where was the captain at that time? — On deck.

Did he see the signals? — Yes.

I think you told us that the Dryad did not at all alter her course till the pilot came on board? — No.

Did the pilot say any thing when he came on board, or before he came? — Before he came he hailed, and asked where we were going with the vessel.

How far were you from the breakers at that time; do you judge? — Half a mile by that time. We were going very little through the water all the morning; it was very nearly a calm.

Did the pilot take you into port? — He did.

That would be the 23rd of October? — On Wednesday, the 23rd.

Did you continue with the Dryad, or did you leave her at Hayti? — I left her there.

On what day did you leave her? — The 2nd of November I got my discharge.

Did you state to the captain—Captain Loose—any reason? —

Mr. C. Phillips, to the witness. Do not answer that question. I must take your Lordship's opinion whether that is evidence.

Lord Chief Justice Tindal. It is not in the course of the actual voyage.

The Attorney General. Very well, my Lord.

I do not ask what the reason was; did you assign a reason to Captain Loose? — I did.

What ship did you go on board of? — The Bencoolen.

Were you paid your wages by Captain Loose? — I was paid my wages, all excepting 2*l.*, by Captain Loose, which 2*l.* ought to have been paid in Liverpool.

The Attorney General. Does not your Lordship think I may ask the witness what his reason was for leaving the Dryad?

Lord Chief Justice Tindal. You can ask him what he saw done.

By the Attorney General. Now, you went with Captain Tait in the Bencoolen? — I did.

I must trouble you to look at the chart, and to tell me whether the course that the Dryad took is delineated upon the chart. I can only ask the course that the Dryad took till she came to Port Hayti (the chart is handed to the witness)?— That course marked with the blue.

Now, tell me where she deviated from what you consider as the proper course? — Here (pointing it out on the chart).

Do you see a red line there? — Yes; I do.

What does that denote? — That is the track that I suppose that she ought to have gone.

Upon this chart (handing another chart to the witness) is there a red line and a blue line? — There are.

Does the blue line indicate the course she took till she came to Cape Hayti? — Yes.

And a red line the course you think she ought to have taken? — Yes.

In your judgment she ought to have gone to the south side of St. Domingo, and to have gone by the channel between Guadaloupe and Antigua? — Yes.

Suppose she had gone to the north of St. Domingo, would she

have followed the proper track? — She ought to have gone nearer the shore.

To avoid the Silver Bank? — Yes; and in the course she was steering, if she had missed the Silver Bank, she would have run for other shoals.

When she came to Porto Plate, and from there to Cape Hayti, ought she to have gone so near the shore as the blue line denotes? — No.

Was that dangerous? — Very.

Are there shoals and reefs there? — Yes.

If she had followed the track that is marked by the red line would she have escaped that danger? — Yes; the danger would not have been so great.

Was there any thing in the state of the wind or weather to render it necessary that she should follow that course, keeping so close in by the shore? — None; the wind enabled her to keep any distance.

Can you mention any object that the captain could have for the proper navigation of the ship, to keep her so near the shore? — I cannot.

And there was no necessity or occasion for it? — None.

Were you alarmed as she was sailing along the shore there? were you alarmed from time to time; were you afraid? — No; I was not afraid, but I always had my suspicions.

Suspicions of what?

Mr. C. Phillips. Do not answer that. My Lord, I think this is a little going beyond the rule, considering we have an Attorney General here.

Cross-examined by Mr. C. Phillips.

Where did you sleep last night? — I did not sleep any last night.

Where did you pass the night? — In a room.

Was that room in a house? — I believe so.

You have your doubts about that, have you? — No; no doubts.

Did that house happen to be the Station House? — I did not inquire.

Upon the oath you have taken, do you mean to tell the jury you have a doubt that it was? — (*No answer.*)

Come Sir, you are on your oath. Tell the jury on your oath whether you have a shadow of a doubt? — I have a doubt that it was.

The Attorney General may understand that, but I do not.

What kind of language is that? Do you mean you know it was? — I do not know that it was.

Then you have some doubt whether it was or not? — I rather doubt it was, but I did not inquire.

Do you mean you rather think it was? because I believe that is Scotch. Do you mean you rather think it was? — Yes.

When you say you rather doubt it was, you mean you rather think it was. Now, I ask you whether you do not know it was? — (*No answer.*)

Come, come, Mr. Maxwell? — I didn't inquire, therefore I will not swear it was or was not.

Are you in the habit of passing the night without sleep, in a room, in a strange house, without inquiring what house it is? Had you no curiosity to know where it was you found yourself in the morning? — (*No answer.*)

Come? — No.

Then it was a matter of course your finding yourself in a strange room without a wink of sleep all night, in a house you never were in before, I suppose? — It was a house I never was in before.

And you never inquired where it was? — No.

What kind of attendance had you? were they men or women in that house? — I saw both.

Now, how were the men dressed? — With coats and trowsers.

Did they happen to have blue coats, with letters and figures on the collars of them? — Some had and some had not.

Is it a strange thing for you to see men dressed with trowsers, that you tell me they had trowsers? — No.

Some of the gentlemen had letters and figures on their collars: these were policemen I suspect? — I did not ask them.

Perhaps you have your doubt of that, Mr. Maxwell? — No, I hav'nt much doubt of that.

Perhaps it was from having no doubt, that you did not ask them? — I believe that was the case.

Do you know who the gentleman was that came into court yesterday evening, shouting at the full of his voice in that passage, and as drunk as he well could be? — I have been told.

Who was it? do you know him? were you not finished up last night? — No, Sir, not entirely.

Now, who was the gentleman that was in the court last night shouting, and had a conversation with one of my friends about the table? — I was only very sorry that I took an extra glass of wine yesterday myself, therefore I cannot answer the question.

If you were in that passage shouting at the top of your voice till you were obliged to be turned out of the court, you forget it, do you? Could that happen to you and you forget it? — It might.

In a court of Justice before my Lords' faces? — It might.

Where was it you took the extra glass of wine? — In a public house.

In whose company, pray, or were you by yourself? — By myself.

Did you pay for your own wine? — I did.

Then it was not quite true that it was the prisoner's friends who made you drunk; you paid for it yourself? — I got nothing from any friends of the prisoner's.

Now, tell me, were you ever taken up yourself upon this charge? — No.

No? do you mean to swear that? — (*No answer.*)

Do you mean to swear that, Mr. Maxwell? — Upon which charge?

Were you put into custody upon any charge by the prosecutors? — I was not in custody.

Now you seem to draw a distinction—Were you in confinement? — No.

Do you mean to swear that? — Yes.

That you were not given in custody? — Yes.

Do you remember one of the examinations, on the 12th of November? — I do; but I was not in custody. I was on bail.

That is a distinction, certainly. Were you taken into custody before you were bailed? — There was an officer present.

Who had you in charge? — (*No answer.*)

There was an officer present, in whose charge you were? — I was never in confinement.

Were you not in charge of that officer, so that you were not at liberty to go where you liked unless he let you? — He did not mention that to me. I was willing to go with him wherever he chose.

Upon your oath, could you have gone away without his following you? — I did not try.

Do you mean to tell us now that you have the least doubt you were in his charge? — (*No answer.*)

Come, Mr. Maxwell, you have the Jury before you, answer to them? — Probably for a minute or two I was; if he had taken upon himself to take me in charge.

For a minute or two? — Yes.

How long were you before you were bailed? — Bail was offered before it was asked for.

What was bail offered for? — For me.

How for you? — For my appearance.

Did you come in a state of drunkenness to the Mansion House also to give your testimony? — (*No answer.*)

Come, Mr. Maxwell, answer the question, if you please. I have not a great deal to ask you. Just answer that question, and tell me if you forget it? — I do not forget having enough, being a little merry at the Mansion House one day.

Before Sir Peter Laurie? — Yes.

You were merry before Sir Peter, the magistrate? — Yes.

What do you call merry? Do you mean that you were cracking jokes with the Magistrate? — No.

Do you mean by merry that you were drunk? — No.

Were you taken off to a place of confinement for your merriment? — I was.

How long did you stay in confinement? — During the night.

The whole night? — Yes.

For being a little merry merely? — Yes.

They kept you all night: where? — Sir?

Where did they keep you—where were you confined? — I had a good room that night.

Where was it? — In the Compter.

That is a prison? — (*No answer.*)

Is it? — I really cannot answer that question.

You have a doubt whether the Compter is a prison or not? — I am a stranger in London.

How long have you been in it? — Sir?

Answer the question. You heard it perfectly. How long have you been in London? — I have been coming and going to London the last fifteen or sixteen years at times.

Have you a doubt that the Compter is a prison? — Sir?

You heard the question. Have you any doubt that the Compter is a prison? — You say it is.

Have you any doubt about it? — I have not any doubt about it after you have told me.

Had you a doubt after spending the night in it, or is it out of courtesy that you take my word for it? — I had a very comfortable bed.

Had you any power of going out of the very comfortable room? — Yes.

Into the streets? — No.

Had you the least doubt when you found yourself in that room, in the morning after your merriment, that it was a prison? — I have not the least doubt now.

Had you then when you got sober? — I was aware it was some place of confinement.

Is the Captain alive or dead, in your belief? — I do not know that. It is hard for me to say that.

Have you any belief of it, upon your oath? — My belief would be that he is alive, by what I have been told.

Did you ever hear he was dead? — I have heard he was dead several times.

Are there any regular authorities at Cape Hayti—any Governor of the Port? — There is. There is a Captain of the Port, and a Colonel of the Port.

How long did the ship of Captain Loose remain at Cape Hayti under repairs—about how long; I do not care about a week or so? — Two or three weeks, probably; but I had left her then.

But she was to be seen, was she not? She was occasionally to be seen by anybody that passed her by? — Yes.

Now you have attributed to the Captain that he cried out, "She is lost! She is lost! We shall be all lost!" when she struck. You remember that? — On the Silver Keys.

Did not the Captain call out to clear away the boats? — He called out to heave the jury boat overboard.

I have a reason for putting the question to you. Did not the Captain then call out to clear away the boats? — He did.

Was not the jury boat at that time turned bottom up on the long boat? — She was.

Were there any tackling in the long boat at that time? — No, not at that time.

Had you to get the tackling? — Yes.

Now, just remember about this jury rudder. Did not you say to the Captain that you could soon make a jury rudder which would take you into port? — That I would get one made; not that I would make it myself.

That you could easily get one made. There was a carpenter on board, you have told us? — Yes.

Now tell us at that time how near were you to Cape Hayti, or about how near. About how many miles were you off it? — I could not exactly say.

Give us some notion, according to the best of your recollec-

tion—about how many miles? — About 200, I suppose. I could very soon tell if I had the chart in my hand.

Did not you give your opinion to the Captain upon his consulting you, that Cape Hayti was the nearest port, and that you should make to it? — That it was the best port for us to go to.

Did not you ask the Captain what you should take to make a jury rudder of, for you had no spare topmast, nor any spare spars? — Yes.

Did not the Captain tell you that you should not do so; but if the carpenter could make anything of the studding sail booms he might take either of them? — He did.

Did the carpenter, according to that direction, make a rudder of the studding sail booms, and some spare planks and pieces of oars? — He did.

Now, on the 22nd, you say, you were close to the reef of rocks off Cape Hayti? — Yes.

Did not the straps of the jury rudder give way? — They did.

So that you drifted on close to Hayti reef? — No; it was not through that we drifted on. We were close to the reef when the jury rudder straps gave way.

Did you not trim the sails so as to keep her off and get her head to sea? — Yes.

Was not that by the Captain's orders? — It was.

How close were you to Cape Hayti at that time, pray? How close to the entrance to the port—about four miles, I believe? — We were about four miles from the harbour. Four or five.

And you then, I believe, also gave your opinion on being asked, that the best thing you could do would be to run in for the port? — Yes.

Now, lest you might be wrong, did not the captain call the carpenter and the second mate to see if they coincided with you? — Yes.

At that time was not the rudder unshipped? — It was.

Did you not suggest to the captain the best way of getting into the harbour? — I told him we could very soon replace the jury rudder as it was, keep her at sea that night and stand in in the morning.

And did he not do so? — He did.

And was there not next morning when you were standing in for the harbour, a signal hoisted on board your ship for a pilot? — None.

Is this true, "The captain agreed to this, and the next morning accordingly, we were standing in for the harbour, having hoisted

582707

a signal for a pilot?" — The "Bencoolen" had a signal for a pilot, but we had not.

Did you ever say you steered in for the harbour having a signal hoisted for a pilot? — Not to my recollection.

Will you swear you never said you had? —

The Attorney General. If there is to be any contradiction to the account now given, the deposition must be put in.

Mr. Phillips. My friend is strictly right, I shall not indulge him in a reply.

If you ever said that you were steering in with a signal hoisted, it was not the fact? —

The Attorney General. I must object to that.

Mr. C. Phillips. I do not say a word of the magistrate. I say *if* he ever said so. I do not ask whether he ever did say so.

Lord Chief Justice Tindal. You may ask him that.

By Mr. C. Phillips. If you ever said so, was that the fact? — No; we had no signal flying.

Then if you ever said so, it was not true? — I do not recollect ever saying so.

If you ever did say so, was it true? — No; if I ever did say so: but I do not believe I ever did.

As you are occasionally in the habit of being a little merry, you might have said it and forgot it? — I do not think I ever did say so.

Do you not forget when you are merry what you both say and do; for instance, do you remember being in this court last night? do you remember a word of it? — I was here nearly the whole of the day.

Were you not desired as a witness to leave the court. I was not at all aware you were in court. Were you not desired as a witness not to stay in court? — No, I was not.

Now, I ask, do you remember being in the court last night shouting? — (*No answer.*)

Never mind, I will not press you upon that. Now the pilot, you say, when he came on board said if the crew would work the sails to his orders, he would work the vessel in. Is it usual for pilots to say that when they come on board a ship? — I thought it was very necessary, having only a jury rudder.

That was a sufficient reason to justify the pilot for saying so? — It was.

He stipulated that the crew were to be under his orders for the purpose of getting you into port? — Yes.

And you thought that was quite right, in consequence of the imperfect state of the ship? — Yes.

You were taken that same afternoon into the port, the crew obeying the pilot's orders, were you not? — Yes.

You say the three pilots went to the Bencoolen, I think you said so? — I did not.

Two? — I said two, not three.

At that time I think you said that, though it was a calm, you were drifting towards a reef? — Slowly towards the reef.

Could you be discerned from the harbour? — Yes; we were seen the day before from the harbour.

I am speaking of the point of time when the pilot came from the Bencoolen? — Yes; we could be seen from the harbour.

About how far were you from the harbour at that time—about four miles? — Four miles or thereabouts.

About how far was the Bencoolen from the harbour? — She was nigher the harbour.

About how near was she to it, is my question? — Probably about the same distance, but we had to go down in the direction for her before we could enter the harbour.

Can you tell us about what time it was that the pilot came on board? — About 11 o' clock in the forenoon.

Broad day light? — Yes.

And, if I understand you rightly, it was pretty calm weather? — It was nearly a calm then; the sea breeze was not set in. It does not set in till about noon generally.

How long was the pilot piloting you in, those four miles? — Two hours and a half, or three hours.

Getting the four miles? — Yes.

Did the man appear to you doing his best to get in?—The pilot? Yes? — Yes.

Now I am afraid that I must ask you a little about Liverpool. You were on board the ship at Liverpool? — Yes.

Do you know Michael Wallace, the brother of the prisoner? — I saw him.

You know his person? — Yes.

Was he on board the Dryad at times? — Yes.

About how often? — He was very seldom away from her during the day.

Was Captain Loose often in his company on board? — Yes.

Can you tell us about what was the tonnage of the Dryad? — I have seen her reported 204 tons.

I am not speaking as to what she was reported; but in your opinion, as a seafaring man, what was the tonnage? — About 300 tons.

Not between 300 and 400 then? — No.

That is your judgment of the matter is it? — Yes; 200, or a little more probably.

Is it your judgment that she was not between 300 and 400? — No: she was nothing of the kind.

Do you think she could carry 300 or 500 tons? — Of dead weight she could not.

Of any weight? — She might carry 300 tons of what are called measurement goods.

Re-examined by the Attorney General.

Now, in the first place, was any charge ever brought against you of being concerned in casting away the ship Dryad? — None.

Were you in confinement at the time you mention; had you then taken too much wine? — A glass too much I believe. It was before Michael Wallace was apprehended; and I made a jocular allusion that I thought I knew where he was, and that was the sum total of it.

Has more been ever required of you here than to attend as a witness? — Nothing.

Last night we understand that you were the worse for drink? — I had a glass of wine too much.

You were tipsy?

Mr. C. Phillips. He has not said that.

By the Attorney General. As my friend has asked you respecting your habits on shore—getting merry sometimes—I ask what is your habit when you are on board a ship? — I never taste either wine or spirits at sea.

From the time you sailed from Liverpool till you got to Cape Hayti were you ever the worse for drink? — No.

You were asked your belief as to Captain Loose being alive or dead, and you said you had heard that he was dead? — I heard he was dead: but I have heard since that he sailed for America from Montego Bay, in Jamaica, in a vessel bound for the States of America.

You were asked respecting the state of the boats—when you got upon the Silver Key, were they in such a state that you could easily have got them about? —

Mr. C. Phillips. That is rather a leading question.

By the Attorney General. Could you have got them afloat? — Yes.

Suppose the Dryad had not drifted off the rocks, could you have made your escape in the boats? — Yes, we could have left her in the boats.

Would there have been any difficulty in doing that? — No.

And going in the boats to Hayti? — Yes.

You could have done that easily? — Easily.

How long would it have taken to have got the jolly-boat and the long-boat afloat? — From ten to fifteen minutes.

You were asked as to the jury-rudder being made of the studding-sail booms: were those fit materials for making the jury-rudder? — No.

What ought the jury-rudder to have been made of? — A spare topmast is one of the best pieces to take for one, when it is on board a ship. It is generally what is used.

Was there a spare topmast? — None.

What was there from which a jury-rudder could have been made that was on board? — The main boom or the sprit-sail yard were the two largest spars.

Could they have been spared for making the jury-rudder? — They could for that distance.

If a jury-rudder had been made of these materials, would it have answered better? — It would.

You have been asked about the position of the Bencoolen. Was the Bencoolen in a position in which she was in any danger? — No.

Might the Dryad have been placed in the same position if she had observed the signals that had been made. Might she have been placed in the same situation as the Bencoolen? — Yes; she might have been in the situation where the Bencoolen was at daylight in the morning.

Did you yourself see the signal made from the Bencoolen for a pilot. Did you see the signal flying? — I saw it flying. She had a union jack flying, and an English ensign flying.

Are you sure that no signal was made for a pilot from the Dryad? — None.

Did you ask the captain? — I asked him, and he would not allow me to make one.

How far were you from the breakers, at the time when he refused you leave to make a signal for a pilot? — About two miles.

Were you going in that direction? — It was in that direction.

Was she drifting, or was there any little wind? — Small flaws of wind; very little.

Did these flaws of wind carry her through the water? — A little; she was just moving through the water. It was between the sea and land breeze.

Mr. C. Phillips. Will your Lordship have the goodness to ask the witness, whether he did not drink brandy with the captain on one occasion in the cabin.

By Lord Chief Justice Tindal. Did you drink brandy with the captain on one occasion? — I was asked, on leaving Anagada, to go down and take a glass of brandy after my exertion.

By Mr. C. Phillips. Did you do so? — I did not. I thanked him, but I would not take any.

BENJAMIN SCHULTZ sworn.

Examined by Mr. Clarkson.

Is your name Benjamin Schultz? — Yes.

In the year 1839 did you ship as a carpenter on board the Dryad, on a voyage to Santa Cruz and Cuba? — Yes, I did.

You joined her, I believe, on the 1st of September? — Yes.

Have you recently come from the coast of Africa? — Yes.

When did you arrive in England? — Seventeen days ago.

You were very ill, I believe? — I was.

And are so still? — Yes.

Who engaged you on board the Dryad? — Captain Loose.

How was the vessel found in point of provisions on that voyage, well or ill? — Very little.

How was she found in point of tackle and spare spars on board? — Very poorly.

And in point of gear generally, ropes and sheets, and so on; was she well or ill found? — Very poorly.

Do you remember, after you sailed, the captain giving you any orders about the long-boat at any time? — He did: to keep her well in order, to keep her well caulked all round and well paid, and to keep her always half full of water, for fear the sun should try her.

Would the effect of those orders be to keep the long-boat always ready for sea at once? — Yes; to keep her always ready.

Was there any tackle kept on board of her? — As we were in the English Channel, we always kept two tackles in the boat.

By whose orders? — By the captain's orders.

Do you remember the time when the ship came in sight of Anagada? — Yes.

Do you recollect what day of the week it was? — It was on a Thursday.

I believe the day of the month you do not know? — No.

When the vessel hove in sight of Anagada, who was at her wheel? — I was.

Was there a cry from anybody of any breakers a-head? — Yes; I saw the breakers, and told the mate.

You mean Maxwell? — Yes.

Did you shew them to the mate? — Yes.

How far from you were they? — About four or five miles.

Did the mate go to the captain? — The mate told me first to heave the wheel down to put the ship about, and then he went to the captain.

Did you put the ship about? — The captain came on deck.

Did you put her head about? — Yes.

When the captain came on deck had you put her head round? — Yes.

Which way was she steering at the time when you first observed the breakers a-head—was she going away from the breakers or towards them? — When I brought her round she was going away from them.

But when you first observed the breakers a-head, was she going towards them? — Right towards them.

You put her round by order of the mate, and put her round when the captain came on deck. On your putting her round when the captain came on deck, did he complain to you? — He did.

What did he say? — He cursed me, and asked me who had given me orders to put the ship about.

You were at the helm at this time; what became of you then? — He pushed me away, and hove the helm up again, and brought the ship towards the reef again.

When the captain spoke to you in this way, did you give any answer why you had done it? — Yes; when he asked me who gave me the orders to put the ship about, I told him that I gave the orders myself. I told him I was not a mind to run the ship on a rock in broad daylight.

You had the orders from the mate? — Yes; but I did not tell that to the captain. I told him I had done it of myself.

When the captain put the helm up again, and when she was going again towards the reef, did the crew do anything? — Yes; they came all aft upon the quarter deck, when the captain put her up again, and enquired of him what he was a mind to do.

We must not have the whole conversation. But after the captain left the helm did you take it again? — Yes.

How long did the captain keep the helm? — Not very long.

What became of him? — He went down in the cabin, and I went on the helm again, and the rest of the crew braced the yards, that I might again bring the ship round.

And you put her helm down again, did you? — Put her helm down again.

What was the effect of your putting the helm down a second time after the captain went below? — She then went away and cleared the rocks.

How near was she upon the rocks when you put the helm down the second time? — She was very near to the rocks then.

What distance did she clear them, think you? — I do not know exactly.

Was she close, or far from them? — She was very close to them. If she was two minutes longer she was gone fast on the rocks.

Do you know the place called the Silver Keys? — I do.

How many days after that Thursday was it, before you got to the Silver Keys? — It was on the Saturday as we were on the Silver Keys.

Two days afterwards? — Yes.

Did you see the rocks that are called the Silver Keys? — Yes.

How far were you from them when you first saw them? — I could just see the breakers a-head, and saw a lump of rock sticking up.

In what direction was the vessel going then, with reference to this lump of rocks called the Silver Keys? — Going right in — the lump of rock was a little on the larboard side.

It is a large shoal is it not—the Silver Keys? — Yes.

Who had the helm at that time? — I had.

When you saw the Silver Keys did you hail the mate? — I did.

Did the mate go below and fetch the captain? — He ran forward first, and looked.

And then what did he say? — He saw the rock and the breakers, and then went down to the captain.

Did the captain come up? — Yes.

Did he look? — Yes, he did; but he said he could not see any breakers or rock.

Could you see it with your naked eye? — Yes; I saw it from the wheel.

Do you remember after that, whether any man on board called out any thing? — Yes; there was a man on the fore yard.

How soon afterwards? — About five minutes; he shouted out there was not four feet water under our keel.

Did he say any thing about rocks? — He shouted out there was about four feet water we had on our keel—that there was the rock.

Did you go to look? — I could not.

You were at the wheel were you? — Yes, I was at the wheel.

Where was the captain at this time? — He was on deck all the time.

When the man shouted out from the fore yard, what did the captain do or say? — About five minutes after the man shouted out the vessel struck.

Did the captain say or do any thing at that time? — No.

Did the captain say any thing about the vessel? — No; he did not—he was very frightened—at the same time he was shouting out "What will we do, lads; we are lost."

Was any thing done to the boats then? — No.

Where were the boats at that time? — The long boat was standing in the boat-gripes, and the jolly boat was lying in her, top uppermost.

That is the usual way is it not? — It is.

What became of the captain? was he on deck? — He was on deck all the time.

Was any thing done to get the boats out? — No.

You say she struck within four or five minutes on a rock? — Yes; after the man had shouted out from the fore yard.

Did that produce any effect upon the rudder? — It knocked two pintles off the rudder, and the rudder unshipped.

About what time in the morning was it? — It was about seven o'clock.

How long did the captain remain on deck after she struck? — Not very long.

Did he go below? — He did.

You did not see what he was doing below, I suppose? — No.

Was any thing done by any of you towards repairing the rudder, making what is called a jury rudder in the course of that morning? — Yes; the rudder was hoisted on deck.

And you did what you could to make a jury rudder? — Yes.

And you made one did you? — Yes.

Of such wood as the captain gave you? — Yes.

Now, do you remember the night before you made St. Domingo? — Yes.

Did any thing happen to the jury rudder then? — Yes.

What was that? — It carried away the strap that the rudder hung to.

How long was this after you had made the jury rudder? — I do not know exactly, but it was not very long.

How many days—two days, or what? — Longer than that, it was nine days; we ran all the coast along St. Domingo.

Now, when the strap came off the jury rudder, do you recollect whether there was any life-preserver on deck? — There was.

Whose was that? — The captain's.

Do you remember anything being said to the captain about the life-preserver by the crew? — Yes.

At the time that that happened? — Yes.

What was it they said to him? — They told him if he put it on they would cut it all to pieces.

About how far from Cape Hayti were you when the jury rudder was unshipped? — About five miles.

Were you keeping well off at sea, or were you close to the shore at that time? — Close.

Was there any reason you could perceive for keeping so close to the shore? — None.

Do you remember the night before the gun was fired? — Yes, I do.

Had you kept out to sea during that night? — Yes.

Before the gun was fired had you seen a large ship to the northward of you? — Yes, we did.

Do you know the reef off the mouth of the harbour at Cape Hayti? — We saw the breakers.

About how far from them were you when the gun was fired? — About five miles off.

And what course were you steering with reference to the breakers—away from them or upon them? — Right upon them.

Was the ship's course altered at all after the gun was fired? — No.

Not at all? — Not at all.

Did you see the English ensign flying?—Yes, on the large ship.

Was that a signal for a pilot? — Yes.

Now, before you kept her out to sea that night, and before the morning when you heard the gun, had you been called by the captain? — Yes, me and the second mate.

His name is Davis is it not? — David Davis.

What did he say to you when you went to him? — He asked us what we were a mind to do with the ship—we had no rudder to her,—he said it was best way to keep her for the rocks.

What did you say to that? — We told him we would not; we thought it would be better to keep her for the night out to sea, to keep her off the rock, and try for Hayti in the morning.

Repeat as well as you can recollect the words you used, or that the captain used to you about that, when he called you together —you and Davis? — That was all the words, and then we went forward again, me and Davis, to give the mate the orders, then to trim the sail and keep her off for the sea.

Did she answer her helm at that time? — She had no helm, but we shipped the rudder again.

They made a fresh strap, I suppose? — Yes.

And after you had rigged your helm, you stood out to sea again? — Yes, for the night.

You say the captain said to you he thought it would be better rather to stand for the rock? — He did.

What answer did you give him? — We told him we would not do that; we would sooner try to get off the rock and keep her for the night at sea.

You say you did not alter your course when the gun was fired from the Bencoolen? — No.

After that did you see a pilot come from the harbour to the Bencoolen? — Yes, we did.

Had you signalled at all for a pilot on board the Dryad? — No, we had not.

Did you understand the meaning of the firing of the gun, and the hoisting of a flag, from the Bencoolen when you saw it? — Yes, we made out that we was on the wrong place.

But the ship's course was not altered? — No, not at all.

Did you continue on in the same course whilst the pilot boat was coming from the harbour to the Bencoolen? — Yes, on the same course, right for the rock.

Now, after the pilot boat had made the large ship, did you observe whether anybody came on in the same boat from the large ship to you? — Yes, we saw the boat coming off to us.

Upon the boat coming off to you, did your captain alter the ship's course at all? — No, he did not.

Then did they bear down upon you from the boat? — Yes, they came right to us.

As they bore down upon you from the Bencoolen, did they hail you at all? — Yes, first, before they were so close to us as to speak, they had a flag in the boat.

Did they wave the flag? — Yes.

Was the captain told of this? — He was on deck all the time.

Was the ship's course at all altered then? — No.

And when you came within hail of them, did they hail you? — Yes, the pilot did; he asked us where we were going to with the ship.

Did the pilot at last come on board of you? — He did.

Up to the time that the pilot came alongside, was your course at all altered? — No, not before the pilot altered the course.

Now, were the breakers, or not, plain to be seen from the time you first observed them, and the gun was fired, till the pilot came alongside? — Very plain to be seen; we had very little wind, and we did not go much through the water.

Was there any difficulty, from the state of the wind or weather at that time, to have kept off from the reef if the captain had been disposed? — Yes, I do not know about that; if the wind had changed we should have very soon been on the rock.

Had the pilot any difficulty when he came on board of taking the vessel away from the rock? — Yes.

I mean, did he do that easily? — He altered the course, and the wind was very free for us to keep off the rock.

He altered your course, and then you made the harbour? — Yes.

How long did you lie in the harbour when you got there? — Nine or ten days, as I recollect.

Was there any complaint made by yourself and the crew to the captain, when you came into the harbour? — Many times.

Mr. C. Phillips. We cannot have that.

The Attorney General. We were anxious to conform to the rule laid down; but I submit that it is within that rule that we might hear complaints made to the captain.

Lord Chief Justice Tindal. There must be a line drawn somewhere.

By Mr. Clarkson. Did you make any effort to be permitted to leave the ship? — Yes, we did.

Were you permitted to leave her? — We were not allowed.

You were shipped on the voyage out and home? — Yes.

You made an effort to leave the ship at St. Domingo? — Yes.

Were you permitted to leave her? were you compelled to go on, or would the captain allow you to leave? — No, he would not.

Do you remember the day of the month when the Dryad left Cape Hayti? — On the 5th of November.

Do you know the reef off Cape Cruz? — I do.

Do you recollect the day she struck on the reef? — Yes.

What day was that? — The 10th.

Had you observed the reef before you struck her? — Yes; about ten minutes before we struck on a small lump of rock.

I suppose you know the situation of this reef to Cape Cruz? — Yes; we saw it as we came along the land the day before, as we were very close to the land all the day before.

Was the reef plain enough to be seen? — It was night when we struck, and we could not see it.

Could you see it in the day time? — Yes, very plain.

Seeing it in the day time, was the ship's course altered at all to avoid it? — Not at all.

Under whose orders were you acting on deck on the night on which you struck on the reef? — The captain himself.

By Lord Chief Justice Tindal. Had the captain the helm, or were you at the helm? — No; there was another man at the helm, a sailor.

By Mr. Clarkson. But the captain was on deck? — He was all the night.

And the vessel was under his personal orders all the time? — Yes.

About what time was it of the night that she struck? — About half-past two.

Was it the practice of the captain to remain on deck all night? — He never was another night before on deck except that night.

Was the captain on deck when she struck? — Yes.

Was a man of the name of Simpson at the helm? — He was.

Upon the ship striking, did the captain give any orders to Simpson, who was at the helm? — Yes; he cried out to Simpson to let go the wheel and run away, for he might get hurt.

Were any orders given by the captain at the time she struck? — Nothing at all.

Was any effort made to get her off? — None at all.

Did the crew come on deck and speak to the captain? — Yes.

When she was first upon this reef that she struck on the 10th, did she make any water? — Not a drop of water.

Did you ascertain that she made no water? — I sounded the pump every half an hour.

Were there two pumps on board, or only one? — There were two pumps, but only one we could use.

Why could you not use the other? — It was choked up: there was some iron of some kind in it.

You could not work it? — No.

How long had that been the case? — It was found at Liverpool, and I told Captain Loose about it at Liverpool.

Was any alteration made before you left? — No.

Or any attempt to clear it afterwards? — None at all.

What were the hands doing at the time she first struck upon the reef and made no water, you having sounded the pumps every half-hour—were any orders given to make any effort to get her off? — No.

What were the crew doing? — Standing on deck and sitting down, and that was all.

Where was the captain? — He was on deck for a little while, and then he went down in the cabin.

Before he went down in the cabin, did he give any orders whatever to try to get her off? — No, not at all.

Now, in your judgment, the ship making no water at the time when she first took these reefs, could she have been got off? — Yes, she might.

Was there any effort whatever made to get her off? — No.

Or any orders given by the captain to the crew for that purpose? — No; we left all the sails hoisted up, and never touched a sail to take a sail in.

And received no orders for that purpose? — No.

As far as you could observe, were the crew willing to work if they had been directed? — Yes.

Were you willing to work? — Yes; and so we was all.

Now, supposing the anchor had been heaved out at her stem, and the sails had been all doused, do you think she might have been brought off? — Yes.

Now, about ten o'clock in the forenoon of that day when you struck about two in the morning, do you remember a *canoe* coming on board of you? — Yes.

Were you then hard and fast? — Yes; we were hard and fast then.

Did you know what countrymen they were; the men in the canoe? — Spaniards.

Were any enquiries made of the people in the canoe as to the shore or land? — Yes; he asked if there was not a town close in.

Who did? — The captain.

What did the Spaniards say? — Yes; thirty miles over the mountains.

Was any thing said by the captain or by the Spaniards about a consul? — The Spaniards told him there was a consul there.

What consul? — An English consul.

Did the captain then take a berth with the men in the canoe, and go ashore? — Yes he did.

How long did he stay ashore? — Not very long; about four o'clock he came back again.

On the same day? — Yes; and then he took our boat and four men and went on shore again.

Before he went on shore the second time with the men in your boat, did he tell you where he had been to? — Yes; he told us it was to the Spaniard's house.

Mr. C. Phillips. I do not know whether your Lordship thinks all this is evidence; it is all after the event; I am unwilling to interpose.

Lord Chief Justice Tindal. In strictness he may say what he was doing.

By Mr. Clarkson. While the captain was gone with the four

men in your boat, were you and Simpson left on board the Dryad? — Yes.

You had been some time upon this rock; was your ship sound at that time? — Yes; it was tight enough then.

Had she made any water at that time? — No, none at all.

You had another boat on board, had you not? — Yes.

Did you and Simpson do any thing with that boat while the captain was gone on shore? — Yes, made some sails for her, and tried her.

To see what she would do? — To see what she would do.

Did you go round the ship? — Yes; round the ship and some small islands.

Did you notice anything at the stern of the ship at the time? — Yes; we saw a cigar box down at the bottom.

The water is very clear in the neighbourhood of the rocks, is it not? — Yes; and an iron bolt lashed to it.

Did you get it up? — Yes, we did.

How near to the window of the master's cabin? —Not far off; very close to it.

When you got it up what did you find the cigar box had in it? — Some letters.

Anything else? — No; just a few letters; four or five letters; and we dried them and opened the letters.

I must not ask you what those letters were, but do you know what the log book is? — Yes.

Were there any leaves of the log book? — Yes; there were some leaves out of the log book in this box.

Now, when Loose came back from the shore, had he any conversation with you and the crew? — Not that same day: the next day he had.

Did he come the same night? — Yes.

How long afterwards? — I forget what time; it was the afternoon.

Had he said anything to you about a horse at any time? — Yes.

Mr. C. Phillips. Come, come, what have we to do with the horse!

Mr. Clarkson. Never mind, I will not pursue it.

What time did you leave the ship? — Next day.

In the ship's boats? — In the long boat; we left the jolly boat on board.

And where did you go to? — To Falmouth in Jamaica.

Was it at Falmouth that the protest was noted? — Yes.

By Lord Chief Justice Tindal. What became of the letters? — (*No answer.*)

By Mr. Clarkson. What became of those papers that you and Simpson found in the cigar box? — We kept them; not me, but Harry Simpson.

Did you at any time produce them to the captain? — Yes.

Mr. Clarkson. May I ask, my Lord, what was said to the captain at the time they were produced?

Lord Chief Justice Tindal. Certain letters are produced to the captain.

Mr. C. Phillips. After the event, my Lord?

Lord Chief Justice Tindal. Yes; but we may have as to what took place with regard to these letters.

Mr. C. Phillips. I understand my friend to seek to give in evidence the contents of the letters. As to the captain claiming them we have no objection.

Lord Chief Justice Tindal. I think you have a right to ask what took place with respect to those letters; whether the captain claimed them, or took them, or what was done.

By Mr. Clarkson. What became of those letters which you and Simpson found in the cigar box? — Captain Loose snapped them away from Simpson at Jamaica, and gave him four pound notes to get them.

Was that the day after you left to go to Falmouth, or after you arrived at Falmouth? — It was two days afterwards.

Was it at Falmouth? — At Falmouth.

You say you shipped on the 1st of September; do you remember the goods being brought on board that came from Zulueta? — No, I know nothing about the goods.

After you came on board on the 1st of September, do you know of any goods of any kind being brought on board? — No.

If there had been a large quantity of goods on board besides the ship's freight that would have taken a day, or a day and a half to have loaded, do you not think you must have seen something of them? — Yes.

Did you see any such thing? — No.

Are you aware of any that were brought, or supposed to have been brought, from the water-side; were there any brought from the water-side? — Not to my knowledge.

Or from the pier? — No.

Did you take your watch regularly? — At sea I did.

After you went on board the long boat and went to Falmouth, where the protest was noted, did you or any of the crew, as far as you know, or the captain go back to the vessel? — No.

What became of the captain? — He went from Falmouth to Montego Bay.

From the time you left her, she was abandoned by the captain, the Dryad was, was she? — Yes.

Before you left the vessel you say, when she first struck and was upon the rocks, you tried and sounded and found she made no water, did you afterwards, and before you went to Falmouth, find anything had been done with her, or that anything was the matter with her? — Yes, I found a hole cut through her under her stern.

Now, from the position in which she lay upon the rocks, was that a hole that the rocks could have made upon her by the ordinary bumping of the sea? — No rock could make it.

What sized hole was it? — It was big enough so that I could creep my shoulders through it.

What water was she making at the time you discovered that hole? — The day before I had, the captain asked me if I had sounded the pump, I had sounded this pump two hours before.

Was she making water then? — No, she was tight.

Did you tell the captain so? — I did.

What time of the day was that? — About 12 o'clock in mid-day.

How soon after that was it that you, for the first time discovered the hole in her stern? — I found a hole the next day.

What part of the next day? — In the evening.

Now while the ship was upon the rock, was the weather calm and steady, or boisterous and stormy? — Very nice weather indeed, the vessel was very steady.

Were there any natural means that occurred to you, that would account for the hole that you found in her stern, considering the position in which the veseel was lying upon the rocks, and the weather very fine and calm? — No, it could not.

Now, when you found the hole in her, did you sound her to ascertain what water she had made? — I did.

What water had she made? — I found five foot water in the hold.

Now, after you had found that hole, and before you started for Falmouth, was the vessel then in such a state that she could have been got off at all? — No.

What time in the evening of the day after you had sounded the pump and found her tight, was it that you found the hole just at the stern? — About four o'clock.

How soon after you had found that hole in her stern, did you leave for Falmouth? — The next day.

About what time? — About five o'clock.

Did you see the hole first from the outer part of her hull or from the inner part of her? — From the inner part.

Do you know the captain's state room? — Yes; it was in the captain's state room, and the door was locked.

In it or near to it? — It was in the room.

Did you tell the captain of it? — No; he saw it plainly; he was in the cabin before we left the vessel, and he looked at the hole.

Did the captain, when you say he saw the hole plainly and was in the cabin where it was, say anything to you about the hole? — No, nothing at all.

You remember the circumstance that occurred at the Silver Keys: from that time are you aware of any state in which the crew kept their clothes? — Yes.

In what state? — We always was under rocks, and reefs and breakers, and we were fearful of coming on the rocks.

And how did the crew keep their clothes? — Kept them in bags, always ready to save themselves.

You say you always kept close to the shore, among the rocks and reefs; are you able to distinguish and to describe what the proper course of the vessel was? — No.

All you know is, that she kept close in shore all the while? — Yes.

Mr. C. Phillips. My Lord, the Attorney General said something about a protest which he promised to put in.

The Attorney General. Any paper we have got, if you call for it, you shall have it; I do not mean as your evidence.

Mr. C. Phillips. I am sure you do not, after what you said; but I should put it to you whether this is not the fairer time to put it in, that I may hand it to the witness and cross-examine him upon it.

The Attorney General. We will hand it to you.

(*The protest is handed to Mr. C. Phillips.*)

Cross-examined by Mr. C. Phillips.

How long is it since you gave your evidence to the solicitor, or rather to the solicitors for this prosecution? — Sir?

How long is it since you told this story of yours to the gentlemen employed as solicitors for the prosecution? — It is about seventeen days ago since I came from Liverpool.

Will you have the goodness, in the place of answering a question not put to you, to answer the one I do put? I did not ask when you came to Liverpool. You seem a foreigner, and do not understand, perhaps. How long is it since you gave your evidence to the lawyers who conduct this prosecution? — About seventeen days ago.

Then you gave it immediately on your arrival? — Yes, I did.

Which they took down in writing from you? — Yes.

Now did not the captain, several times in the course of the voyage, ask your opinion, and Davis's opinion, and the mate's opinion, as to what was best to be done in the way of steering the vessel? — No, not to me.

Then he never asked you and Davis as to what was best to be done as to steering the vessel? — Yes, once.

You said "No never" just this instant. Recollect before you answer. When was that? — At Cape Hayti, the night before we came into Cape Hayti.

Did he not follow your advice? — Yes, he did.

And you say at Cape Hayti he insisted on your staying with him in the ship? — Yes.

Against your will? — No, not against our will. He told us to keep the vessel for sea.

Did he insist at Cape Hayti on your remaining as sailors on board his ship? — Yes.

Which you wished not to do, I think you said? — Yes.

Off Cape Hayti, at day-break, how far off the reef was the Dryad? — About four or five miles.

Are you sure she was more than two miles off the reef at day-break? — Yes, she was more than two miles off.

Can you undertake to swear she was three? — I could not.

I believe it was about eleven o'clock that the pilot came on board? — In the forenoon.

I do not know what you call the forenoon. Was it about eleven o'clock? — Yes, it was.

When the pilot came on board at eleven, how far was the

Dryad off this reef? — She was about two miles then off the reef.

So that from day-break until eleven she had only gone about a mile towards the reef? — There was very little wind, and she did go but a very little way.

When the pilot came on board, did he not say that he would steer towards Cape Hayti or into the port, provided the crew would obey his orders? — Yes.

Is that a usual thing for a pilot to say when he is asked to pilot a vessel in? — No.

Was it not, in your opinion, on account of the state of the rudder, and the unmanageable state of the vessel, that he said that unusual thing, that he would steer her in, provided the crew would assist him? — Yes.

Now, according to your account, you seem to think this vessel was cast away on purpose? — Yes.

That is your notion? — (*No answer.*)

Did you ever say she was lost accidentally? — Yes.

Did you ever *swear* she was lost accidentally? — Yes.

Lord Chief Justice Tindal. You must shew the protest to him.

The Attorney General. It must be shewn to him.

Mr. C. Phillips. Beyond all question.

The Attorney General. Let it be read then.

Mr. C. Phillips. I want to keep nothing back. I never saw it in my life, and I do not know what it is.

(*The protest was read.*)

Mr. C. Phillips. I shall ask him no more questions.

Re-examined by Mr. Clarkson.

You signed a protest, which you have sworn to, that the statement of the captain was substantially true? — Yes.

Have you heard this copy read? — I cannot recollect whether it is the same.

Be so good as to tell my Lord and the jury under what circumstances it was you signed that protest? — Because we had nothing to eat, and the captain promised us our wages if we would sign it, and if we would not, he would not give us our wages.

Had you refused to sign it before you were induced to sign it? — Yes, we had.

Once, or more than once? — Once.

What were the wages that were then due to you? — Coming to me?

Yes? — About 4*l.* and some shillings.

When you signed where were you? — At Falmouth.

Were you at any house that the captain had, or at a public house? — Where the captain was.

Had you asked the captain for your wages before you were asked to sign it? — Yes we had.

And were refused them? — He promised us that as soon as we had signed, he would give us our wages.

When you signed it, did he give you your wages? — No; he did not, he told us to go and look for our own business.

You said something about some papers which you shewed to the captain—you and Davis? — Yes.

Were those papers shewn to the captain before or after you signed this protest? — Afterwards.

After you had signed the protest, he would not pay the wages? — No, he would not.

Did Simpson then shew him the letters that had come out of the cigar box? — No, he did not shew them; he told him if he did not pay us our wages we had something that would soon put him in irons.

Simpson told him this? — Yes.

What did he say to that? — He began to laugh—he said "I should like to know what that is." It was at night about eight o'clock in the evening.

Had Simpson got his wages at that time? — No, he had not.

What did Simpson do when the captain laughed, and said he should like to know what it was? — On Sunday morning he sent for Simpson.

Were you with him? — No, I was in the other room.

Did you hear what passed? — No, I did not.

When Simpson came did you see him? — Yes.

Had he got the letters with him? — No, he had four one-pound notes, and the captain snapped the letters from him.

Did you see him do it? — No, Simpson told me.

Did you see Simpson go to him? — Yes.

And when Simpson came out, he came with four one-pound notes? — Yes.

Did you ever see the letters after Simpson came out? — No, never.

Did you get any part of your wages? — No, I did not.

You were promised them if you signed this? — Yes.

You signed it and then he would not give them to you? — No.

What did he say? — He promised me when I had signed it to give me my wages, and find me in grub till I had a ship, and as soon as I had signed the protest, he told me I might go and look about after my own business.

Did he give you any promise of payment? — He gave me a letter to Mr. Wallace.

Which of them? — The eldest.

What did you do with it? — I left it at Liverpool the last voyage.

Mr. C. Phillips. Will your Lordship be kind enough to ask him whether they were Bank of England notes that he saw?

By Lord Chief Justice Tindal. Were they Bank of England notes that you saw? — Yes.

Mr. Clarkson. Perhaps your Lordship will be good enough to ascertain whether the witness knows a Bank of England note when he sees it; for this man is a foreigner.

By Lord Chief Justice Tindal. How often have you been in England? — Many times.

Mr. Clarkson. Will your Lordship ask him if he understands the difference between a Jamaica note and a Bank of England note?

By Lord Chief Justice Tindal. You said when you were asked what notes they were, that they were Bank of England notes. Do you know what you meant by that? — Jamaica notes— twelve shillings to the 1*l.*

The Attorney General. With your Lordship's permission, I wish to ask Captain Tait a question about the track that the vessel pursued.

CAPTAIN ALFRED JOHN TAIT, recalled and sworn.

(*Examined by the Attorney General.*)

You told us you were acquainted with the navigation of the Atlantic? — I am.

And the West Indian seas? — I have been there.

Suppose a ship is sailing from England to Santa Cruz, ought she to go to the north or south side of St. Domingo? — There is no particular reason why she should not go to the north, but it is customary to go on the south side; and I should always go on the south side on a voyage to that part.

Suppose a ship were to go on the north side of St. Domingo—will you just look at the blue line on this chart (handing the chart to the witness)? — I see it.

Would that be a proper course for her to pursue going on the north side? — It would not.

In what respect is it wrong? — First of all it is wrong being so far from the land.

Ought she to have gone upon the Silver Bank? — Of course not.

Is that well known to navigators? — It is.

And laid down on all charts? — It is, to the best of my knowledge.

Do you see the blue line? — I do.

When she had left the Silver Bank, was it proper for her to keep creeping along the shore? — No.

Was that dangerous? — I should say it was dangerous.

Ought she to have kept out to sea if she had been going to Cape Hayti? — I should have kept her out to get the trade wind.

Do you see a red line? — I do.

In your judgment ought she to have gone by that red line? — She ought.

Was there any fair purpose of navigation that would bring her in so close nigh the shore of St. Domingo? — Not that I am aware of.

Sailing from Cape Hayti do you see a red line from Cape Hayti to Cape Cruz? Just look at that chart? — There is no red line from Cape Hayti.

Suppose the ship does come by the north side of St. Domingo, and comes to this point where the red line and the black line cut each other—from that intersection do you observe a red line to Cape Cruz? — Yes.

Would that red line be the proper course to pursue to get to Cape Cruz from the intersection of the two lines; would the red line be the course to pursue? — It is the course I should have taken.

As the proper one? — Yes.

Would there be any difficulty in getting to Cape Cruz by that course? — Not any.

Do you see the blue line? — I do.

Close in shore? — Yes.

Would that be the proper line? — I should say not.

What would be the objection to that line? — There are a great many reefs off Cape Cruz.

Are those reefs laid down in the charts? — They are.

And are they well known to navigators? — They are.

Do you know the reef which this ship, the Dryad, came upon on the 10th or 11th November? — Cape Cruz do you mean?

I mean the reef? — Which reef are you speaking of?

The reef on which she was lost? — I know it from the chart.

Is it distinctly laid down upon the chart? — It is.

By keeping on the red line might that reef have been easily avoided? — It might.

Do the breakers upon such a reef indicate that there is a reef? — I should think so; I never saw that reef.

But generally speaking are there breakers off every reef? — There are.

So as to give notice and enable a ship to avoid that reef? — There are.

How did Maxwell, the mate, conduct himself on board your ship the Bencoolen? — He was with me for nine months.

Mr. Doane. I do not think we are here to inquire into that, my Lord.

By the Attorney General. How long was he on board? — Nine months.

Lord Chief Justice Tindal. That is after the time. You have the man's own oath, you know.

Cross-examined by Mr. Doane.

When you were examined yesterday, you stated that you saw from the Bencoolen the Dryad, and at that time I think you say there was a light wind? — There was a very light wind.

In what direction did that wind come? — I cannot say positively what direction it was in, it was very light.

You afterwards saw the ship, the Dryad? — In port, I did.

And you noticed the state of the rudder? — I did.

Now, I ask you from your knowledge of these matters, whether, with the rudder in that state, such a temporary rudder as you saw, that would not tend to render the ship unmanageable? — Yes, but the very moment the pilot went on board she became manageable and she went round.

Suppose you had such a rudder on board your vessel, would it not, in your judgment, render your ship less manageable? — Of course *less* manageable, but not *un*-manageable.

But not so manageable as if she had a perfect rudder, I suppose? — Of course not.

Now, you have been asked to-day about this voyage by the north or south of St. Domingo, and I think you say you generally went by the south? — Yes.

How often have you crossed the Atlantic? — I cannot tell exactly, but some eight or nine times.

My friends have asked you with reference to the North Passage, how you would have proceeded to Cape Cruz? — After I had once got in ———

Do you ever go into the North Passage? — I have.

How often have you gone the North Passage? — I was bound to Cape Hayti. I was obliged to go the North Passage. I have never gone this voyage to Cape Cruz.

Beyond that you did not go? — No.

You returned? — I returned.

When you were on board, I think you looked down one of the hatchways? — Yes.

That was the aft hatchway? — Yes.

Lord Chief Justice Tindal. The witness was cross-examined as to this.

Mr. Doane. No, my Lord, it was reserved by consent.

Lord Chief Justice Tindal. I beg your pardon, pray go on.

By Mr. Doane. The main hatchway was closed then, was it? — I believe it was.

When you saw the Dryad from the Bencoolen, what distance was she from the Silver Key? — I can hardly tell you without measuring it from the chart.

But about what distance? — It was Cape Hayti I saw, not the Silver Key.

How far must she have proceeded if she had been at the Silver Key, to have been in the situation you saw her in? — About 120 or 130 miles.

How far would the Silver Key be from the land? — About 60 miles.

Re-examined by the Attorney General.

With the knowledge which you subsequently acquired of the state of that ship's rudder, I ask you if you are aware of anything to have prevented her, when you fired the gun and made the signals to her, from steering off from the reef? — I believe not; the moment the pilot went on board she came round.

Have you any doubt but that she might have been brought round before? — I have no doubt but that she might have been brought round before.

Mr. J. Frost, re-called.

Examined by Mr. Bodkin.

Did you, after the prisoner, Patrick Wallace, was taken into custody upon this charge, see him? — I did.

Where? — In the Compter.

Were you sent for? — I was.

Did you have some conversation with him? — I had.

Be so good as to tell us what passed? — I expressed my sorrow to find him in such a place, and he declared himself to be an innocent man, and said that his brother was a big scoundrel; that he was only acting as agent for his brother, and that he knew not but what the goods were shipped that were supposed to be shipped.

Cross-examined by Mr. C. Phillips.

From your saying to this young man that you were very sorry to see him in that situation, I suppose that up to that period you had a high opinion of him? — I had.

He was resident in London, I believe? — He was.

And, as far as you knew of him in the way of his business, he conducted himself fairly and honestly? — I never saw or heard anything to the contrary.

John Roe, sworn.

Examined by Mr. Laurie.

You are a police-officer of the City of London? — I am.

Did you take the prisoner into custody? — I did.

When? — On the 27th November.

Where? — At the Jerusalem Coffee House, in Cornhill.

Will you tell us what passed? — I will. He was enquired for at the Jerusalem Coffee House. The clerk of the room called him. He came to the door, and I said, "I will be glad to speak with you a moment, sir, if you please." He came outside. I said, "Do you know a person of the name of Stott?" and he said, "Yes, I do." I said, "Did you insure goods on board the Dryad?" he said, "Yes, I did." I said, "You must consider yourself now in my custody." He said, "It is all right, you may depend upon it." I took him to the Mansion House and searched him, and found a bunch of keys upon him.

Did anything pass between you and the prisoner when you took him to the Compter afterwards? — Yes.

State what it was?

The Attorney General, to the witness. When you took him from the Mansion House to the Compter?

By Lord Chief Justice Tindal. He had been examined at the Mansion House, I suppose? — Yes, and then remanded; and I took him back to the Compter. He said, "Ah! Mr. Roe, you ought to look after my brother, he is the most guilty party in this matter, and that you will find. You will find the policies are signed Michael, and not Patrick, except the General Maritime; with respect to which I acted under his instructions." I then went to his lodgings, No. 40, Windsor Terrace.

And you found some papers there, which you delivered to the solicitors for the prosecution? — I did.

Did you afterwards apprehend Michael Wallace? — I did.

When? — On the 17th December.

By the Attorney General. Is that a book you found among the papers (handing a banker's pass book, marked W.W., to the witness)? — It is.

By Mr. Laurie. You say you apprehended the prisoner, Michael Wallace, on the 17th December? — I did.

Where did you apprehend him? — At a place called the Pot Houses, at Lancaster, No. 4.

What sort of a house is that? — A poor cottage.

Where is it? — Near Lancaster—just on the outskirts of Lancaster.

Will you state what passed?

Lord Chief Justice Tindal. No.

The Attorney General. No, my Lord, we will not pursue that.

By the Attorney General. Tell me whether that (handing the manifold writer to the witness) was also found among his papers? — It was.

Before you apprehended Michael, had you been looking after him? — I had.

Had you been trying to find him? — I had.

Both in London and Lancaster? — Yes.

And you could not find him before that 17th December? — No.

Cross-examined by Mr. Doane.

It was close to an arm of the sea, I believe, was it, where you found Michael? — Yes.

Did you not also take into custody the two sisters of the prisoners? — I did not.

Did you not see them afterwards in custody? — I did.

And I believe the wife of Michael? — I did.

The Attorney General. Now we are going to show what became of the money that was received from the insurance offices. It may be material to show the proportions in which Patrick and Michael obtained the money.

Mr. Henry Cotton, sworn.

Examined by Mr. Bodkin.

Are you a clerk in the London and Westminster Bank? — I am.

Did the prisoner at the bar, Patrick Wallace, open a deposit account with that bank on the 22nd January last? — He had had deposit receipts there before; the account was not opened at that time.

Have you a book in which those who open accounts with you enter their signatures? — I have.

Produce it, if you please? — (The witness produces the book).

I do not know whether you saw him write it? — I cannot be certain as to that.

Have you seen him at your banking house? — Yes.

And you know his person? — I do.

Now, on the 22nd of January was there paid in to his account this check for 1012*l.* (handing a check to the witness)? — It was; on the 22nd of January.

Mr. Bodkin. Now, I will ask him about the Alliance check, marked F, for 715*l.*, for insurance on goods.

Was that also paid into his account on the 5th February? — Yes, it was.

Those two sums together would make 1727*l.*? — Yes.

Was there added to that account 2*l.* 2*s.* 10*d.* for interest? — Yes, on the 20th March.

And was the account also credited 2*l.* 6*s.* 8*d.* for interest? — It was.

Those sums together would make 1731*l.* 9*s.* 6*d.*, would they not? — Yes, I believe so.

Was there drawn out 5*l.* on the 5th February? — 5*l.* was drawn out on the payment of the 715*l.*, but there was no check given for it.

Lord Chief Justice Tindal. He cannot remember all this.

Mr. Bodkin. The books are all here, my Lord.

On the 8th February was there 250*l.* drawn out? — There was. If you will hand them to me I will explain them to you.

(*Some papers were handed to the witness.*)

The Witness. 1012*l.* was presented for payment, endorsed by P. M. S. Wallace.

That is paid in? — Yes. 250*l.* is paid out and a new receipt, which I hold in my hand, is given for the balance—762*l.*

From time to time, as the money is drawn out, you give an acknowledgment for the remaining balance? — Yes.

Was there on the 20th March taken out also 30*l.*? — 34*l.* 2*s.* 10*d.*

Lord Chief Justice Tindal. Is it necessary to prove every item?

The Attorney General. It will become very important, my Lord.

By Mr. Bodkin. And then was there a sum of 12*l.* 6*s.* 8*d.*? — There was.

On what day was that? — On the 24th March.

Now those sums added together make 301*l.* 9*s.* 6*d.*, do they not? — Yes.

Deducting that 301*l.* 9*s.* 6*d.*, from the further gross sum of 1731*l.* 9*s.* 6*d.*, is the balance remaining 1430*l.*? — It is.

By the Attorney General. That is to the credit of Patrick? — Yes.

By Mr. Bodkin. Now, on the 26th March was that 1430*l.* drawn out? — It was.

Now, when you paid the 250*l.* on the 8th of February, did you pay it partly in a two-hundred pound Bank of England note? — I did.

Give me the number of that? — 83,633.

Now give me the numbers of the notes which you paid for the 1430*l.*? — 1000*l.* note, number 40,633; two notes of 200*l.*, numbered 84,817 and 88,505; a 30*l.* note, 15,515.

Mr. Bodkin. That makes the 1430*l.*

Cross-examined by Mr. Doane.

I think you stated that before the 22nd January, Patrick had deposited there? — He had.

About how long before? — I cannot speak to that.

A month or six months? — I cannot say; I have not the book with me.

But I understood you knew the fact? — I do know it.

Cannot you give us any idea whether it was a week or a year? — No, I cannot say.

We understand all your books are here? — Not all of them.

Could you tell by any book you have? — Yes; on reference.

By some book you have here? — No, not that I have here.

You cannot give any judgment whether it was a week or a year? — Of course more than a week.

No, it is not of course? — I cannot tell positively at all when he first deposited. He has been constantly in the habit of paying in sums of money.

By Lord Chief Justice Tindal. Do you think he had been a depositer as long as a year? — I should say about a year.

MR. JOHN SAUNDERS, sworn.

Examined by Mr. Bodkin.

Are you in the London Joint Stock Bank? — I am.

In February last had Michael Wallace, the prisoner's brother, a deposit account there? — He had.

On the 8th February was there paid in to that account a 200*l.* note, number 83,633? — There was. That was the first transaction with him.

That was when the account was opened? — When the account was opened.

Do you know by whom that was paid in? — By Michael Wallace himself.

MR. JOHN KEMPSTER, sworn.

Examined by Mr. Bodkin.

You are a clerk in the Bank of England? — I am.

Do you produce some bank notes? — Yes; four.

Just give us the names and the numbers and the amount of them? — 1000*l.*, 13th January, 1840, number 40,633.

Lord Chief Justice Tindal. That we have not had before?

Mr. Bodkin. Yes, my Lord.

Lord Chief Justice Tindal. What I have before is 4633.

Mr. Bodkin. No; it should be 40,633.

The Witness. A 200*l.* note, number 84,817; another 200*l.* note, 10th January, 1840, number 88,505; and a 30*l.* note, 15,515.

Now, when were they brought into the Bank of England—

were they all brought in together? — Yes; 26th March, 1840, in the name of Wallace.

What were they exchanged for? — I paid 1430 sovereigns for them.

Mr. William Herbert Mullins, sworn.

Examined by Mr. Bodkin.

Do you know the prisoner at the bar? — Yes.

You are a stock-broker, I believe? — I am.

In the month of March, 1840, did you make a purchase of stock for him? — I made a purchase of stock by his order.

On what day? — On the 27th of March.

What amount of stock, or what was the consideration for the stock? — The consideration paid for the stock was 1100*l.*

How did he pay for it? — In sovereigns.

All in sovereigns? — The whole of it.

By Lord Chief Justice Tindal. In the name of Patrick? — No, not in his own name. The stock was purchased by his direction, but it was not transferred into his name.

Into what name was it transferred? — Into the name of Catherine Wallace.

He produced the 1100 sovereigns and paid for it? — Yes.

Mr. Bodkin. We are now going to show Michael's share, my Lord.

Lord Chief Justice Tindal. What has that to do with this case?

The Attorney General. It is important to show that they were acting in concert, and that he received a part of the proceeds upon the goods, my Lord.

Mr. Henry Cotton re-called.

Examined by Mr. Bodkin.

In February, 1840, had Michael Wallace, the brother of the prisoner, also a deposit account with the London and Westminster Bank? — Yes, he had.

Have you seen him personally at your bank? — I have.

Do you know his person? — Yes, I do.

Now look at this check, marked E.E. (handing a check to the witness), this is the Neptune's check, partly for goods and partly for freight, for 500*l.* Was that paid in to the credit of that account on the 1st of February? — It was.

What amount of money was standing to his credit at that time? — 1065*l.*

Now look at the check marked F.F., for 700*l.*, which is the Neptune check. Was that check paid to the credit of the same account on the same day? — Yes.

Look at this check, marked C.C. (handing it to the witness). Was that paid into the same account on the same day? — It was.

1278*l.* 18*s.* 6*d.*? — Yes.

Do those sums together make a gross sum of 3543*l.* 18*s.* 6*d.*? — Yes.

By Lord Chief Justice Tindal. What check is that?

Mr. Bodkin. Selden and Johnson's; also on account of the Neptune, my Lord.

I believe that there had been taken out from this account 88*l.* 18*s.* 6*d.*? — 78*l.* 18*s.* 6*d.*

And 10*l.* when the 500*l.* check was paid in? — Yes.

Then the 88*l.* 18*s.* 6*d.* being deducted from 3543*l.* 18*s.* 6*d.* leaves a balance of 3455*l.*? — Yes.

Now tell me when that balance of 3455*l.* was drawn out? — On the 7th of February.

The day after the greater part had been paid in? — Yes.

Mr. John Bryant Priestman, sworn.

Examined by Mr. Bodkin.

Are you a clerk in the banking-house of Smith, Payne and Smith? — I am.

On the 7th of February last, was a sum of money paid into your bank to the credit of Michael Wallace? — On the 7th of February, 3,400*l.* in the name of M. S. S. Wallace.

By Lord Chief Justice Tindal. Did he keep an account with you before? — No; it was through the British Linen Company of Edinburgh that this money was received.

The Attorney-General. This is the case for the prosecution, my Lord.

Mr. C. Phillips. Will your Lordship allow us just to ask Maxwell a question?

Lord Chief Justice Tindal. By all means.

Mr. C. Phillips. And Schultz also?

Lord Chief Justice Tindal. If you please.

(*Ronald Maxwell was called, but did not answer.*)

BENJAMIN SCHULTZ recalled.

By Mr. C. Phillips. There was only one question I forgot to ask you. You say there was a seaman of the name of Fitzpatrick on board? — Yes.

Do you know where he is? — No.

Have you seen him lately? — No.

Mr. Clarkson. We will prove he is not come, if you wish it.

Mr. C. Phillips. If you tell me he is not come, that is quite satisfactory.

CAPTAIN TAIT recalled.

By Mr. C. Phillips. Maxwell was with you on board your ship? — He was.

How soon after the loss of this ship was Maxwell in London, to your knowledge? — He has been to London three or four times.

The Attorney General. That is the case for the prosecution, my Lord.

DEFENCE.

Mr. C. Phillips. May it please your Lordship. Gentlemen of the Jury. It now becomes my duty to address you on behalf of the prisoner, Patrick Stewart Wallace; and I confess I cannot help feeling the disadvantage under which I do so. In the first place, this unfortunate young man has opposed to him, not only some of the most wealthy insurance offices in London, who have left no stone unturned and no means unpursued, by which, if possible, to insure his conviction, but he has against him also the formidable array of counsel which you see before you, headed by her Majesty's able and experienced Attorney General.

To this is opposed, I am afraid, the comparatively very feeble

efforts of my learned friend and myself; and therefore, Gentlemen, it is to your indulgence—to your patience—to your discrimination, and, above all, to your justice, that I mainly trust for the acquittal to which I hope to be able to show you, on this evidence, the prisoner is fully entitled.

Gentlemen, the charge against my client, comprised in a vast variety of counts, it is quite necessary at the outset that you should fully understand. He is accused of counselling and advising Captain Loose, the captain of the Dryad, to destroy that ship for the purpose of defrauding the underwriters of the insurance upon goods which never were on board. Now, that is in short and simple phraseology, divested of all legal technicality and verbiage, the short and simple question you have to try. That being the case, it appears to me that the question resolves itself into three parts, without your being satisfied of each, or all of which, it is impossible, at all events, that this man can be convicted. You first must be of opinion, and unless you are of that opinion, the whole superstructure falls to the ground; you must be of opinion that that on which this case is based is true, namely, that Captain Loose, the captain of the Dryad, voluntarily cast that ship away. I am stating that, I am glad to perceive, under my Lord's sanction. If that accusation fails, Gentlemen, the whole case fails; because, unless this ship was wilfully cast away by the captain, there is clearly no case against the persons called the accessories.

The second point for your consideration, Gentlemen, if you should get over the threshold, which appears to me to present a most formidable stumbling block—The next point for your consideration is, even supposing you thought that the captain was wicked enough—mad enough to cast away this vessel wilfully, have you sufficient evidence before you to come to the unerring conclusion that the goods were never on board?

And the third point is, even if you believe those two points to be established, have you evidence before you to convince you, beyond all doubt, that the prisoner, Patrick Wallace, knew there were no goods on board, and effected the insurances, knowing that—and knowing that the captain was to cast away the vessel?

Now, Gentlemen, I believe I have stated as fairly as man can state to you, the points in this case. I should not take the liberty with men of your appearance, and, I have no doubt,

understanding, to mis-state, intentionally, any of the points. There is in the case itself, in the very outset, a singularity, which, in the course of no inconsiderable career, has now for the first time presented itself to me; and, I apprehend, Gentlemen, it is the first time it ever has presented itself to any one of you. You are to-day about to try a man, who, absent at all events, there is every reason to suppose is no longer living; and I have therefore to defend the dead who cannot defend themselves—who cannot contradict one syllable that may be imputed to them—who cannot cross-examine their traducers; and, Gentlemen, where am I to go for information? Am I to go to the grave and to knock at the dead man's coffin? God help us! we may imagine that we are pursuing our fair and honourable course through life—we may have the satisfaction of seeing the friends we love respect us, and, above all, we may enjoy that inward consciousness which nothing but innocence can give, and yet, Gentlemen, if this precedent is to be followed, how does any man of us know that, when we are lying in our peaceful grave, some traducer may not vamp up a charge to stamp felony on our corpses? That is the situation of Captain Loose to-day—that is the situation of Captain Loose's advocate, for *his* advocate I must be, appearing for one who is charged to be his adviser in his guilt. Now, let me ask you, ought not any honourable Jury—ought not any just and christian Jury, to look with the greatest doubt—with the greatest reluctance, and with the closest scrutiny upon any charge made against a man under such circumstances—a charge made against a defenceless man—a charge made against the dead? what answer can I give to it in the name of Captain Loose? Why I can give no answer but this, I must scrutinize the testimony of the tardy witnesses who come forward to accuse him. I must see what their conduct has been—I must see what the conduct is which they attribute to him—I must see whether the conduct of either is natural—whether the conduct of Captain Loose, attributed to him by them, is natural or probable.

He is accused here on the evidence of two witnesses, and two alone; or, perhaps, I should rather say, under my Lord's direction, of one witness only; because, exclude the evidence of Schultz, and where is the evidence that he cast the ship away at all? I say Captain Loose is accused on the evidence of these two witnesses, of attempting to cast away, and actually casting away,

the ship; thereby endangering not only the life of his crew, but his own life also, and this for the paltry pittance of 150*l.*, the amount of his own insurance.

Gentlemen, if any guilt were traceable to my client, Patrick Wallace, there might have been evidence enough to corroborate Mr. Schultz;—he is apprehended here in London—his house and all that it contains are at the mercy of those who apprehend him—they may ransack it—his desks may be opened—his papers may be abstracted, and no doubt were, under the vigilance of the officer; and has there been one single tittle of evidence produced before you, to show you that he was cognizant of the guilt, if guilt there was, of Captain Loose? Has there been any one single tittle of that written evidence, which is the strongest of all—evidence which cannot err or fail on any cross-examination, to prove to you that Captain Loose had any, the slightest, notion of casting the ship away? Why should he do it?—it is at the risk of his own life;—the conduct too, attributed to him by these two witnesses is altogether inconsistent with common sense, and inconsistent with itself. The Attorney General, you observe, in stating this case (which I must admit he has stated fairly enough) has said but little as to the conduct of Captain Loose, knowing how weak that portion of the case was; although, undoubtedly, that is the portion of the case which he was most interested in establishing in the outset; because, if he did not establish it the whole case failed. He was chiefly occupied with that which we do not seek, and never sought, to dispute—the insurances effected by this young man, and occasionally by his brother; but he did say, by way of hinting that Captain Loose intended to cast the ship away, that he took care to have the boats prepared, and to have tackle put into the boat, and fixed in the long boat, even so early as when they were off Carlingford, on the coast of Ireland. That was one of the solitary circumstances upon which the learned Attorney General rested. Is it true? Beyond all question it is not; and when I say it is not true, my friend I am sure will acquit me of meaning to suggest that he intentionally sought to mislead you. But what I say is, is it true according to the evidence? It is not my intention to fatigue you. I shall direct your attention merely to the leading points in this case; but is that true according to the evidence? And, why was it insinuated to you? For this reason, Gentlemen, to persuade you that the Captain, having a predetermination to destroy this vessel, took care at the same time to secure his own

personal safety in the event of any danger. That was the reason it was stated to you. Is it true? Why, Gentlemen, can you forget that in the extremity of danger that precaution was altogether forgotten? Do you not remember that at the moment when this vessel, the Dryad, was nearly upon a dangerous reef, the long boat had no tackle at all in her, and the jolly boat was lying there bottom upwards? That was at the very time when she was in most extreme danger, that danger being attributed to the wilful act of the Captain. You have had before you these veritable witnesses—the *sober* Mr. Maxwell, and the oath-taking witness, on both sides, Mr. Schultz; who say that the captain saw the vessel running on the reef, and yet what did he do? He went down to bed. Now, for Heaven's sake pause here for one instant. Consult your own common sense, and consider that instinct of self-preservation which is imperative in man. What! go down to bed when he saw that his vessel was running on a reef? Was there a surer way of having himself lost and cast into eternity? What would have been his conduct then, according to my friend the Attorney General's notion? Would he not immediately have said, "Get ready the boats—put the tackle to them—I will take care at all events of that personal safety which is dear to every man"? But, in place of that, he goes down to bed, helpless as an infant, imagining, good easy soul, according to them, that every moment was likely to be fatal; and, that the ship was drifting to the reef upon which her shipwreck became inevitable. Is that natural? Do you believe it? Is it what any one of you would be likely to do under the circumstances? for that is the way to test it. If it be, you have the captain not only consenting to cast away the ship, but consenting to lose his own life, thereby depriving himself of all the wages of his iniquity. You have him doing that not merely at his own personal peril, or rather, I should say, to his own personal destruction, but you have him taking away from himself in the grave all hope of reward, at the imminent peril of the lives of nine of his fellow-creatures; and this is what they call upon you to believe with respect to the captain—the man who is not here to answer any of the accusations of his calumniators. You have him manifestly with a discontented crew. It is said that captains are sometimes tyrannical at sea. I believe that they sometimes are; I believe it is often very necessary that they *should* be so. You have him in jeopardy in another place, upon that Silver

Key, I think they call it. He is alleged to have gone down and to have put on a life-preserver. An exceedingly prudent thing it would have been if he did so. But is it not a strange thing that the gentlemen for the prosecution ask you to view his conduct in two directly different lights, and to draw from each that which ought to convict him? He is so careless when he is in danger, in one situation, that he goes to his bed, and, they say, that shows that he was perfectly careless, and therefore you must convict him. They show, on another occasion, that so far from being a man of that description, he was anxious to preserve his life, because he attempted to put the life-preserver on; and they desire you, from that circumstance also, to convict him: so that whether he is careless of himself, or seeks to save himself, in either case they ask you to convict him. On the subject of that life-preserver, it is a very curious thing, that, according to the evidence of one of these men (I forget which), the crew said when the life-preserver was produced on one occasion of danger upon deck, "If you attempt to put that on, we will cut it in pieces." What! Then the means of safety are taken away; he dared not put it on except at the imminent peril of being cut to pieces; and what do these consistent accusers then ask you to believe? Why, that knowing that he had no means of escape, and that he dare not use the means of safety in his power, on peril of being cut to pieces by his mutinous crew—in the teeth of that he cast away the vessel, and endangered all their lives. The means of escape he had most prudently secured are taken away. He knew he would be torn in pieces if he put on this life-preserver; and yet they tell you that, knowing that, he sought to endanger the ship by casting it away, and that he did so. It is hard to reconcile these inconsistencies; but you are called on to believe them, and to convict my client upon them.

Now, who are the witnesses against him? There is first that Maxwell—a fellow who, whatever he may be on sea, I know what he is on land. We have an old Latin proverb for saying that men do not change their nature by crossing the sea, and I suppose they do not change it when they are *upon* the sea. But the Attorney General puts him forward, and asks him to give himself a character as the soberest man in the whole world when he is at sea, being confessedly the most drunken one when upon land. He could not well avoid it. He was in a difficulty. He knew that he was so reckless that at the very time when the gospel might have been put into his mouth, at any moment—on

two different occasions—before the impartial magistrate, Sir Peter Laurie, in the first instance, and in this court yesterday, he was so drunk that he could not be examined. He was sent (no doubt by the paternal attention of the worthy magistrate) to the house provided for him, and never even asked whether it was a prison. He got a comfortable room and a good bed, and doubted even that it was a prison, which meant in the peculiar idiom of his country that he was sure it was. I know what would have been said by the Attorney General if a witness of another country had presented himself in the box and had told you that when he said, "I doubt such a thing is so," he meant you to infer that he was certain it was so. I can very well fancy the expressive glance that would have shot across the table at myself. I am glad I have an opportunity of returning the compliment, and now you have this to take with you as a lesson in after-life —and it is a pleasing thing to think that not only is the learned leader for the prosecution, of that country, but the worthy magistrate also who committed the prisoner. It is a thing among the many you have learned for the first time during this trial, that when a Scotchman tells you he doubts a thing, you may be sure he is certain of it. It was with some difficulty I got him to admit at last, that, which if he had not admitted, it would have been utterly impossible for him to expect to be believed for an instant —that he knew as well as possible when he was sent to the compter, that it was a prison, and that he was sent there in consequence of his drunkenness. Ought not that to have been a warning to a man coming to take away, not only liberty, but country, from a fellow creature who has now for the first time, even according to the testimony of the witnesses for the prosecution, an imputation cast upon his character? One would have supposed that that ought to have been a warning to Mr. Maxwell. But what occurred no later than last night? Why the sober Mr. Maxwell, the tea-totaller on shipboard, presented himself, hooting and howling in his horrid dialect, in that avenue last night, in such a way, that one of my friends was actually obliged to go, and for the sake of the decency of the court, put him out of it. He knows what a reception he got from Mr. Maxwell. But Mr. Maxwell was carried off by people who he did not think were policemen, but who had blue coats with letlers on the collars, and a number also denoting what they were, and he was lodged in a place that he did not consider to be a station house. He was a stranger in London, poor man. He

had only been eight or ten different times in it—a perfect stranger! It was the first time a policeman had caught his eye. He was attended by men and women, and the men (a novelty to him considering where he came from) not only had coats but actually had trowsers on. Novelties they say strike us strongly, and that was the means he gave me of identifying these men. But he did not know whether it was a station-house that he was taken to, or what it was. He did not sleep a wink, and never had the curiosity to enquire whether it was a station-house that he was sent to, and where he stayed all last night. Gentlemen, have you the slightest doubt that if that man had not been sent to the station-house to keep him sober, he would, with the recklessness as to an oath that his companion has shown, have presented hinself before you to give his evidence in a state of utter intoxication. Well might my friend, Mr. Bodkin, shout out last night, "We shall not examine the mate to-night." They took care not to trust him, and within four stone walls alone could they be answerable for the sobriety of the man upon whose evidence chiefly, associated with that of Schultz, they seek to brand felon upon the memory of the dead man in his grave.

Well, how does this Mr. Maxwell conduct himself? He gives you an account of a variety of things that occurred on board the ship; and it is a strange thing, and I am sure intelligent as I perceive all of you to be, this has not escaped you, that, with the exception of the colouring which Mr. Maxwell, that drunken witness, has thought proper to give to the conduct of the captain, on board, it literally agrees with the log book, the extracts from which are produced by the captain himself, and sworn to by him at Falmouth, in Jamaica. That is a most singular circumstance; but it is so easy to colour facts. We do not dispute a good many of the facts which have been stated before you in evidence; but we altogether dispute the intention imputed and the colouring which these people have thought proper to give them.

Now, Gentlemen, let us test these facts, one or two of them, and see to what they amount, even according to their own account. There is one occasion on which it is said the captain takes the helm from the hands of the carpenter, and for a moment or two he holds that helm, he having then no life-preserver on, but having just run up out of his bed. He takes the helm, and for a moment or two he lets the ship go towards this reef. But what does he do? According to Mr. Schultz's own account, he goes down to his bed again immediately after-

wards—Mr. Schultz resumes the helm—the ship avoids the reef —she is relieved in an instant. Is it not clear, that in the anger of the moment, the captain took the helm for the instant—that he afterwards left it and went down again into his cabin, leaving these people on deck to do as they thought proper. That is one of the prominent features of this case as against Captain Loose. That is one of the things which the great industry and wealth of these insurance offices have collected as bearing against him. Then at Hayti, for instance, there is a reef. That reef is seen at day-break. They are three miles from the reef at day-break. It is insinuated that he wanted, in the face of the town of Hayti, in the face of Captain Tait, the captain of the Bencoolen, at a place where everybody could have seen him, to run that vessel upon the reef at Hayti, and to consign himself and crew to destruction in the presence of the multitude of persons who he took care should be assembled to witness what he did. What turns out to be the fact? At day-break, it is sworn, they are not more than three miles from that reef. I am told to say two; but one of the witnesses said three, and I will take it at the extreme against myself. That is the utmost they could screw themselves up to. At day-break they are three miles from the reef. At eleven o'clock the pilot comes on board. From day-break till eleven o'clock what progress had this self-destroyer, Captain Loose, made towards the reef on which he sought to wreck his vessel? One mile. They were within two miles of the reef at the time the pilot came on board, at eleven o'clock, and yet one of the pretences here is, that the captain wished to dash this vessel upon the reef, towards which, in five hours, the ship only made progress one mile. That is according to the sworn testimony of the prosecutor's witnesses themselves. What occurs when the pilot comes on board? I must do the Attorney General the justice to say, I never did hear any gentleman open a case for a prosecution more fairly, or less exceed his instruction than he always does, and this case has not been an exception; but he has been instructed to say that the captain reluctantly took the pilot on board. But the fact turns out to be quite the contrary, and the moment he goes on board, what takes place? That which must convince you of the difficult card the captain had to play all the way through. The pilot goes on board—sees the state of this vessel with the jury rudder, the straps of it broken. He is in his own waters, and within two miles of his own town, every inch of which he knew; and yet that ex-

perienced pilot, coming out of Hayti, he even will not undertake to pilot the ship into the place to which she is bound, unless he has the positive assurance of the crew that they will act under his orders. That is sworn. "Did you ever know such a demand made before?" was asked of the witnesses. "Never in a single instance, did I hear of a pilot making such a stipulation." Then, why was it made here? Why, the witness says "The vessel was in such a state that he would not undertake it unless we all assisted him." What have you the captain doing before that? I shall not dwell on some minor inconsistencies and contradictions in the evidence between Schultz and Maxwell, but they both agree in this; you have the captain first giving to Maxwell his own opinion—he does not wish to rely upon it, and he says "Do you agree with me, Maxwell?" Maxwell says, "I think we ought to put the ship into Hayti, if we can." But not content with that, he calls up Davies and Schultz, and rather than run any risk with this vessel, which he is supposed to have intended, from the beginning, to destroy, he consults them and finds his opinion and the opinion of the mate corroborated by them. He then takes the pilot on board, and steers to the port, and he ultimately gains that port, which the concurrent opinion of the three, agreeing with his own, advised him to do. It is mighty easy to sneer, but that is the evidence before you. You have it from the prosecutors themselves. Wrung from their unwilling lips, you have that testimony before you which they cannot dispute. Let me ask here, what could the captain do that he did not do? What could any man do under such circumstances that he did not do? It has been said in another portion of the case that when he got this helm made, it was not made of proper materials; and the man Schultz said, that there was a boom that he might have taken, which would have been stronger, and of which he could have composed the helm. What distance had they to go then? According to the sworn testimony, they had to go through those seas, subject to hurricanes, a distance of 200 miles. Let me just put this to you. Suppose in place of vamping up the jury rudder, which it seems did its bidding to within two miles of Hayti exceedingly well, the captain had dismantled his boom, and made a rudder of the boom as was suggested, and that when at a distance of 200 miles from any port, a hurricane had come on and the ship had been lost for want of that boom, what then would have been the outcry of the prosecutors? They would have said "It is clear he sought to destroy this

vessel—why did he undo the boom? By doing so he disabled the ship. He could have made a jury rudder out of other materials, but that would not answer his purpose. His purpose was to disable the ship. He did so; and she went down, because he had purposely dismantled that boom, which would have carried her through if he had made a jury rudder of other materials." Why, Gentlemen, it turns out that the jury rudder which was made, did carry them (breaking the straps indeed), within three miles of Hayti.

Now, Gentlemen, it is a very difficult thing, in the position in which I stand, to be able to defend this man whose name I have only heard of—whose person I never saw,—whose friends are at a distance—who is in his grave, I believe, himself—who has therefore no human being to give to my friend or myself one single tittle of instruction upon which to cross-examine the accusing witnesses. In ordinary cases men are face to face—they see their accusers—they know their accusers—they are acquainted with the real facts of the case, and can cross-examine their accusers upon the calumnious imputations that are chosen to be thrown out against them; but here I have no means, not the slightest, except contrasting, as well as I can, what the witnesses have said to day, without my having the means of cross-examination, with the real facts of the case.

Gentlemen, there is more. It is insinuated by that man Schultz—but am I not wasting time and strength—am I not exhausting human patience by dwelling on the testimony of such a wretch as that? It is attempted to be insinuated by that man Schultz, that the vessel was ill-found—that she was short of provisions for the outward voyage even—that she had inefficient tackle—and that, in fact, every thing was prepared for her destruction. Did Schultz know that? Mr. Kelly, the agent for Zulueta, has been examined. Their property, you will recollect, was on board this vessel—they had one-fourth of the vessel as their own. Did Schultz know that Kelly had deposed on oath that for many a week, and every day in the week before the sailing of that vessel, he, Kelly, had been on board that vessel, on the part of the owners, inspecting her and seeing that every thing was right, and, above all, seeing that she was in an efficient state—tackling and all complete, before the property of his masters should be embarked in her? Mr. Schultz never knew that, when he sought to say that she was unseaworthy at the moment of starting from Liverpool.

Gentlemen, did Mr. Schultz know, or did he forget, or did he choose to conceal that Mr. Howden, on the part of the owners of this vessel, the Dryad, was himself examined here yesterday, in the forenoon, and that he swore that 1600*l.*, no inconsiderable sum, having been given for the Dryad, those who purchased her, not content with the state she was in, actually expended themselves 600*l.* upon fitting her up to make her sea-worthy and complete, and making her, in his own words, a first-class vessel; and yet that unblushing man—that Schultz, comes up to insinuate that she was ill-found, ill-provisioned, unfit for sea, short of every thing, and in a condition to be destroyed. What? Will you for one instant contrast the evidence of Kelly and the evidence of Mr. Howden with the evidence of such a man as that? It is false from the beginning to the end of it. The vessel was well-found. She had every thing that she ought to have had on board. It is perfectly clear she had. 1600*l.* had been paid to purchase her, and any one of you, who must know far more of sea affairs than I can pretend to, must be aware that an outlay of 600*l.* in the fitting up of that vessel ought to complete her in every thing she wanted. There was no question put to Kelly, though he is one of their own witnesses, as to whether she was sea-worthy or not. No question was put to Kelly as to whether she was short of tackling; no question was put as to whether she was short of provisions; but according to the evidence of this man Schultz, you have the captain of a ship embarking with nine fellow creatures, and running, along with them, the imminent risk of starvation. It is really almost too contemptible to be considered for one moment, nor should I think it necessary even to allude to it, but that the fate of a fellow-creature depends upon it.

Now, Gentlemen, an attempt was made which I did not expect from the Attorney General, though I cannot say he had not a right to do it. When I asked Mr. Maxwell whether he had ever said that the Dryad had a signal flying for a pilot, I was immediately stopped,—and why? The Attorney General said, and said truly and legally, that if he had said so, it must have been before the magistrate, and if so, his deposition must be read over to him. No doubt that is the rule of evidence, and I should have been obliged to give the learned Attorney General the trouble, which I should be sorry to expose him to, of replying in this case if I had taken that course. But what turned out afterwards? Why a very remarkable thing if I was wrong—that there was actually in the protest which has been produced by

them, the declaration of the captain, that the jack was flying as a signal at the mast-head for a pilot. I will not say now, that Mr. Maxwell did not say that before the magistrate, or that he did. I will not hurt my friend's feelings by insinuating, that Mr. Maxwell's evidence was different there, from what it has been to-day. It was a strange thing that it should have come into my head, and still more strange that it should turn out, that in the log book of the captain, sworn to by him, it should appear. I believe—but I protest I will not be certain as to Mr. Schultz's testimony, for I viewed it with such disgust altogether, that it made but little impression upon me—that Schultz also admitted, that the signal was flying for a pilot. That appears by the protest, I am told.

Then, Gentlemen, another part of this case cannot have escaped your attention. The captain meant to cast away this ship, they tell you. Indeed! What did he seek to do at Hayti? The crew were manifestly in a state of mutiny. They wanted to quit the ship; and what did this captain do, who, according to their account, intended to put himself in their power, and who had put himself into their power if they have spoken the truth? Why, "No," says he to the refractory seamen, "you shall not quit the ship.—You shall pursue the voyage along with me." So that he who was determined to destroy the ship, was keeping hostile men on board, as if for the very purpose of having vindictive witnesses to his guilt, hereafter. Good God! what would the captain have said at Hayti but this—"You want to go, do you?" "Yes." "Well, I am very glad to get rid of you—I have guilt in my mind—you are hostile to me, plainly—you want to part company with me—you are of all men those most likely to be vindictive against me if I compel you to remain.—Go, therefore—and I will easily get strangers in your stead, in the crowded port of Hayti, who will answer my purpose better." But no—the man who is subjecting himself all through the voyage to their misrepresentation, will not part with them, but insists on their remaining with him, thereby giving a double stimulus to their animosity. I submit, that such conduct, is the very reverse of that, which a man contemplating guilt would pursue. If he could not avoid having witnesses of his guilt, surely—surely he would take care not to have men at anger and variance with him amongst those witnesses.

But, observe again, Gentlemen, the captain is not only reckless of his life, but in the whole course of your existence, did you

ever hear any thing like the conduct which is attributed to the crew, when, according to the testimony of Schultz (for Mr. Maxwell had quitted the ship at Hayti), they were on the very brink of eternity. What were the crew doing? He says some were walking about, and some were sitting down, and all doing nothing. What?—Men who thought their lives in danger at the moment—men who had their clothes bundled up to sink or swim with them—not make an effort to get the vessel off—not take the helm out of the inhuman tyrant's hand, who sought to hurl them into destruction. They sit down, in place of doing what they would have done beyond all question if their lives were endangered by the conduct of this man, rising in a body and disarming him of his ill-used power, confining him to his cabin or his hold, and rescuing the lives of the ten human beings he was foredooming to destruction. Is it true? What is the reason that Mr. Maxwell comes forward at the eleventh hour? According to Captain Tait, a respectable man and an unimpeachable witness, Mr. Maxwell has been in London frequently since this occurrence. Was not Lloyd's open? He had heard Captain Loose talk of the ship being insured, and saying,—"I will not let her be destroyed and thereby lose my insurance;" so that he knew she was insured. What was it induced Mr. Maxwell to come forward after being five or six times in London, keeping the secret to himself all the time till, I believe, he was taken up? But at all events, taken up or not, here he is in London with that important secret buried in his bosom, never uttering one syllable about it until the eleventh hour. Why, Gentlemen, what would have been his duty if there were any truth in his statement? Would he not have instantly gone to Lloyd's? Would he not instantly have sought the different insurance offices to find out whether this unhappy vessel had been insured in any of them or not? Would he not immediately have said—"Stop the money—there is suspicion here—this vessel has been cast away under circumstances which induce me to think she was wilfully cast away. Enquire into the case—investigate the matter at all events. If you must pay them you must, but I will lay abundant evidence before you to make you pause before you impoverish yourselves to pay the guilty." But no such thing. He has not told us why he came forward at last. My friend took special care not to ask him that. We have it on the evidence of Captain Tait that he has been five or six times at least in London, and yet he made no complaint, I believe, up to about

three months ago at all events. But does that limit itself to London alone? Why, there is a captain of the port at Hayti, and a colonel also. Why not complain to them? There was the Dryad repairing in the dock. Why not complain to them? Why not say—"Do not let this ship with her crew of human beings go out on the blue waters under the command of that inhuman monster—he has been seeking to take human life during the whole voyage—stop him, we have enough of evidence to lay before you to induce you to prevent the execution of his diabolical designs. Stop him." That would have been his duty, if there is any truth in his evidence. But that man chooses to let eight of his fellow-creatures embark with that self-same captain, on board the self-same Dryad, in his own mind having perfectly assured himself, that it was his intention to cast the ship away. Well, he hears soon after that the vessel is destroyed, and then what does he do? He is as silent as the grave that holds the man he is traducing. What! Why did he not then go before some magistrate? Why, when he came to London, did he not go before some authority? He would have found ears ready enough to swallow any credulous tale that involved his fellow-creatures. Why did he not do that? But, no, he is in London over and over again. He has the constituted authorities of England in his power—men ready to listen to him as they ought to be—and yet not to a human being does he state this, not even to the insurance offices to whom he was bound to give the information if true. Couple this conduct with his reckless drunkenness through every stage of this enquiry. Couple it with the conduct of the prosecutors, who will not let him go at large, even after they have confined him for his bestial drunkenness in prison. They will not let him go at large on the 12th November, unless he gives bail. Were they afraid that conscience would at last recoil, and that this fellow, in the witness box, would be afraid to reiterate his perjury? They must have thought him liable to be corrupted—that there was something suspicious about him, and that his principles were as little to be trusted, as his sobriety, when they required the security of two of his fellow-citizens, before they would let him enjoy that liberty, of which he seeks by his evidence to deprive a fellow-creature. Even last night, how was he? In the august presence of my Lord, and you who were upon your oaths, listening to the detail of the evidence by which this case is sought to be supported, that fellow reels in, dead drunk, insulting by his presence the solemnities of this court.

And he is the man, who has been to-day put into the witness box, as the accuser of a fellow-creature—he is the man, who, stained all over himself, asks you to brand with eternal infamy, a respectable member of a respectable family, whose very accusers admit, that he never had a stain upon his character, until this accusation was brought forward against him.

"Thus bad begins, but worse remains behind." If Maxwell had been alone, I should have said he was the *ne plus ultra* of a witness, but they seek to corroborate him by Mr. Schultz; who values his salvation at 4*l.*, and who confronted with his solemn oath, sworn at Falmouth, in Jamaica, before the constituted authorities of the land, totally exculpating the captain, now accuses him, and tells you, "I did swear to that protest, but I was paid 4*l.* for doing it." Which of his oaths is true? The oath in Jamaica or the oath here? I wonder whether he will get any "pounds" for the oath he has taken here. He swore at Jamaica in expectation of 4*l.* and he perjured himself for the purchase-money. He has admitted it. Is it true? Is even that damning testimony of his own guilt, coming from his own polluted lips, true? It is as false as the inventions by which he seeks to destroy the character of the dead man. He did not get the money. He has not told you how he lived when he did not get it. He had no meals, good man, to eat in Falmouth, and he was obliged to swear as he did, for the purpose of procuring the means of living. He did swear. He swore, according to his own account, to a deliberate falsehood. He does not get the money, and yet the man who perjured himself to live, lives on after the perjury, without the money. But, good God, Gentlemen, am I not wasting time? Am I not forgetting that I am addressing christian men, when I comment for one single moment on the testimony of such a man as that? Gentlemen, of what value is an oath? Does he attach any value to it? If he does, do you think he would take it for money, and take it to a falsehood? Does he stand up with the scriptures of God in his hands, and with the eye of God looking on him while he does so, to swear that in the name of God he had sworn to that which was false, and that he did it for 4*l.*? Does he admit it here to-day, without a blush, and then did he dare—thank God not with English but with foreign audacity—to ask a jury of Englishmen to convict a brother Englishman on his polluted testimony? What signifies what the purchase money is? If a man once takes a false oath for money, does it not discredit him through

all the world? If I were addressing heathen men, instead of an English jury—if I were addressing men who require the performance of certain ceremonies enjoined by their religion, and told them that in such a presence, some wretch had been found to go through the routine of those ceremonies, and to perjure himself for money, who would believe him, where not the life or the liberty of a fellow creature, but where the value of a single straw, rested upon the credit to be given to his statement? How have they accounted for Schultz signing this protest? He wanted food, he says. Is that true? It is a falsehood. If he wanted it before, he must have wanted it after, for the captain would not, according to him, give him the 4*l.* after he had sworn to the protest. My friends do not ask him "How did you contrive to live?" The man perjured himself for food and money. He got neither, and yet lived on. That is the man, who has been dragged here from a place more congenial to his nature, from the horrid coast of Africa, and fit to herd only with slaves, and with wretches as unprincipled as himself. That is the man, who is brought here to tell an English jury, that he deliberately perjured himself for money, and who asks an English and a christian jury to believe him on that oath, which he tells you can be bought at any time by money.

Now, Gentlemen, it does not rest there. I cannot call the dead as witnesses, but my friend has done it for me. There is appended to that protest the double oath of the Captain Loose, a man upon whose character no imputation rested, until these wretches cast it. He was trusted, among others, by the respectable firm of Zulueta and Co. He was a man of such a character, that they trusted him with their vessel. You have his oath to his perfect innocence.

The Attorney General. It was not their vessel.

Mr. C. Phillips. They trusted him with their cargo at all events, and although my friends express some surprise at my mistaking vessel for cargo, it is immaterial, at all events it is property. They knew him, and they trusted him because they knew him. He is a respectable man, if this imputation is not justly laid to his charge, and you have put in by the Attorney General, his solemn oath, as to the way in which the vessel progressed to the place where she was wrecked; and you have Mr. Schultz on his oath attesting the truth of his statement. So my friend has put in, the oath of a man in a respectable station of life, which gives, but for the colouring the witnesses choose to give to

his conduct, an exact statement of every thing that happened, sworn to have been extracted from his log book, and attested by his oath.

But, Gentlemen, does it rest here? No. There are some witnesses to be found equal to Mr. Schultz, but they have not his brazen and his reckless front. There are four other names, the names of Englishmen, appended to that protest, attesting by their oaths the truth of the statement contained in it. So that you have there, six oaths—the oath of the captain himself, and of five of his bitter and his sworn enemies—you have six oaths appended to the protest, attesting that the captain is as innocent as any one of you. What! Will it be said that each of those men was such a wretch as Schultz? Will it be said that each of those men took an oath for money? Will it be said that each of those men perjured himself for money? And will it be said that each of them did so on behalf of the bitterest enemy he had in the world? They have not gone quite that length. The learned Attorney General forgot to tell you, though he mentioned the protest, that it was on oath. He forgot to tell you, though he mentioned the protest, that there were five oaths there, attesting the truth of the captain's statement.

The Attorney General. My Lord, I apprehend my friend has no right at all to argue upon the supposition, that those persons who are not here present, signed that protest, and we know nothing at all of the fact. Wishing to act with candour towards my friend, I put in even a copy, there being no original, for the purpose of Schultz being cross-examined; but beyond that, I apprehend, it is not legitimate to make any use whatever of that document.

Lord Chief Justice Tindal. No; you must not assume that any other persons swore to the truth of the captain's statement.

Mr. C. Phillips. You will see that document, Gentlemen. My candid friend cannot keep it from you. I shall insist on your seeing it, in despite of his opposition, unless I am corrected by the authority I both respect and revere. That document is in evidence. I have a right to have that evidence placed before you, who are sworn to give your verdict according to the evidence. They have put in the only thing that cannot err. They have put in this written document, out of what they tell me, is their abundant candour. I was giving my friend credit for it; but when the shoe is found to pinch, my friend says, "I give you the protest, but you shall not make use of it."

The Attorney General. I must deny utterly, that I have said anything that can bear any such interpretation. As far as Schultz is concerned, it is to be made the most unlimited use of.

Mr. C. Phillips. I shall say no more, Gentlemen, upon that subject but this, that there is an equal profession upon the face of that document, that it is sworn to by others, as you have it on the oath of Schultz, that he swore it. Why not ask Schultz whether the others swore it in his presence? My friend is far too able and experienced an advocate, not to abstain from asking the question, when he knows that the answer will be such as he does not desire; and I say, that if he was not sure that Schultz would have told him in the same breath that others also were present—

The Attorney General. There is no evidence before the court, that the others had anything to do with it.

Mr. C. Phillips. Thank Heaven, my friend cannot deny that Schultz swore it. That is quite clear. And who is Schultz? A fellow black enough to stain any cause with pollution. You have him admitting that he forswore himself; and you have, O wonder of wonders! Her Majesty's Attorney General, putting a witness into the box, with the foreknowledge, that that witness must admit that he swore falsely for money. What worse was Judas? He betrayed his Master for money; and this man is polluting the Gospel of Him whom Judas betrayed—for money. He tells you that he did it because he was starving, But did his doing so, save him from starving? No; for the captain cast him off. He snapped his fingers at him and said, "I will not give you a farthing." The only thing I believe, in the account given by this man is, that he forswore himself, and that he did so for money. My Lord has told me, and his intimation shall be law, that I have no right to say, that the others swore to the truth of the captain's statement. I have no right to say so; but I have a right to say this—that if they did not, my friend could have asked Schultz, whether the other four persons whose names appear upon that paper, swore as well as himself; and he abstains from asking that question.

Now mind, Gentlemen, at this time, and all through, it is clear the captain and the crew were at variance. Well, I do not want for one instant to blink the answer that I might receive with respect to the silence of this crew at Hayti. We might be told, that perhaps they would have had no redress. That there were no British authorities there. I might be told *that*, in answer to

my observation that Mr. Maxwell and none of the crew made their complaints there. But what do they say to Falmouth, in Jamaica? Lloyd's agent was on the spot. According to this fellow's statement here, the vessel was cast away wilfully. But when at Falmouth, he swears she was not—knowing that there were English magistrates there. English judges—and the agent of Lloyd's—an office of all others interested in scrutinising a fraud like this, on the spot. Do they whisper that the captain was guilty? O no. Let him sink into his grave. Do not accuse him while he is alive to answer the charge made against him, and when he may cross-examine his accusers as to their own conduct and motives, which he alone can know; but when he is in his grave, and cannot answer—when he is gone, and has no person to instruct counsel for him, then stand up fearlessly in the box, when there is no danger of contradiction—stamp upon the grave of the dead man, and call him felon after his death, whom you honoured during his life—whose wages you took—whose innocence you deposed to—and whose money you were anxious to receive, if he could be base enough to give it you for such a purpose, for your perjury. Starving in Jamaica, with the constituted authorities and Englishmen in the place—with this dreadful secret of diabolical guilt capable of being disclosed—with the felon at large before their faces—with the authorities, who were interested above all in detecting and punishing his guilt; they are silent, I was going to say—but no; not silent, but attest, on their solemn oaths, the exculpation of the man they know they ought to accuse; and they do it, as Schultz would have you believe, for fear of being starved. Why, Gentlemen, is there any man alive—will the Attorney General himself—will any of the meanest retainers of the meanest insurance office, tell me he thinks that the agent of Lloyd's, having the felon in his grasp, would not, for the disclosure of such a secret, gladly have furnished these men with their outfit to London, and gladly have sent them home safe, with the captain in custody, in order that they might give their evidence against him; and would they not have obtained the voluntary meed of praise for having promptly disclosed guilt so heinous?

Now, Gentlemen, I have done with this first branch of the subject, with the exception of this single remark; that, when they were set at defiance by the captain, even then when he was forthcoming, they had the opportunity, if they chose, of stating to the constituted authorities of the place how they had been

misled—how they had been sought to be bribed—how they were bribed—then immediate contrition, and their instant accusation; but nothing of the kind was done.

Gentlemen, you have paid me an attention for which I am truly grateful, and which induces me to ask you in this stage of the proceedings, this plain and simple question. Suppose, in place of being named in that indictment, Captain Loose was standing there to be tried as a felon upon such testimony alone, for having cast the ship away, could you, as christian men, for one instant think of convicting him? Could you say in the language of our English law, that this was not a case admitting of abundant doubt? Would you not say at once "I will go further than I am called on to do; I am called on only to say his guilt is not proved, but upon this polluted testimony I am ready to declare, I think him innocent altogether?" And when you have him not before you—when he is in his cold grave, whence he can give no answer—when his memory is sought to be traduced—when the character he had maintained through life is endeavoured to be blackened—when the stamp of felon is to be imprinted upon his grave—all his relatives disgraced and heart-broken at such a result—will you in his absence, and after his death, say that he is guilty of that of which his memory is charged, when if there were one single tittle of truth in it, that charge ought to have been made in a manly manner in his life-time, when he could have confronted his accusers and set them at defiance.

Gentlemen, I have had difficulties enough, God knows, in many a case intrusted to me; but never until this case, was I sent to the grave for my instructions—never until this case did I find every principle of justice—every principle of equity, set utterly at defiance, and the absent tried who had no means or opportunity of defence.

Thus then, Gentlemen, the very first step which you are to take, and I state it of course under my Lord's control and direction, is to say whether you believe Captain Loose wilfully cast this vessel away or not, and I believe I have stated to you the evidence upon which it is sought to be substantiated. If you cannot find *that*, you can go into no inquiry at all with respect to the guilt or supposed guilt of Patrick Wallace.

Now, Gentlemen, I take the liberty of stating that to you, because I know you will receive that direction from the bench. Take the evidence of Schultz out of the case, and I ask you

is there any evidence of the casting away of this ship? Not one tittle. I say that also, I hope, with my Lord's concurrence. I seek to say it under his kind control. Take the evidence of Schultz away, and there is no evidence that the captain cast away the ship at all. Is that evidence upon which you can rely? There is not one tittle of evidence without it. Even if all Maxwell said were true (not one tittle of which do I credit), he left the ship at Hayti. Long after that—days if not weeks—I do not know what the interval was—but some time after that, the ship was lost. It is said she was wilfully cast away, the only witness produced to prove that she was so, being Schultz. Now, my friends have told me, and I give them credit for it, that they are expecting Fitzpatrick every moment. Do you not think it would have been wise to have corroborated Schultz? Do you not think, that the patience which was not exhausted (receiving every kind indulgence) for three long months, might have been taxed for one month more, in order to enable that profligate Schultz, to be corroborated by some one human being, if there were one in existence capable of doing it? Or, did not my learned friend, the Attorney General, think within himself—"Better not to wait for Fitzpatrick, though we expect him every minute—better not wait for him, because if it turns out, as we know it must turn out, that he also perjured himself in that document—Good God! the jury will think this is a vile conspiracy of the seamen against the captain; and therefore, we will trust to the testimony of Schultz alone, and we will not defile ourselves by confederating another fellow-creature with him."

Now, Gentlemen, I shall leave it to my Lord, whose impartiality and justice will, I know, supply any deficiency of mine, to make any observations as to whether these goods have been proved not to have been on board the vessel to your satisfaction, branching off to the third point (for my strength will not permit me to do more), which I consider, as far as the prisoner is concerned, the most important part of the case relating to him, and that is, is there evidence sufficient to convince you that he, Patrick Wallace, in the language of the indictment, counselled and incited Captain Loose to destroy this vessel, for the sake of defrauding the insurance companies. Even if you should believe that Captain Loose did it (and I implore of you, for his sake, to pause before you come to that conclusion), I assure you that, as regards that young man Patrick Wallace, I believe that if Loose were the most guilty man alive (and on this evidence I declare

I think it impossible to pronounce him otherwise than innocent) still I think the case of Patrick Wallace is not touched, and I shall give you a few but, as I think, conclusive reasons why I think you should declare so. Now, I wish to say nothing—God forbid I should—to the disparagement of a person who is to be tried hereafter, but as I hope those who are about to try him are not the auditors of my discourse, I may make my remarks upon him, I hope, without prejudicing his case, and I ask you this—even if you supposed that the brother of this man, who, as I am told it appears by the evidence, absconded from London, and was taken on the sea shore at a distance—was the guilty confederate of Loose, though I by no means say he was—let us see whether it is not very possible that his brother Patrick may be innocent? In the first place, there is that which never could have failed to strike my Lord—Patrick is never at Liverpool at all—he is never brought into the company of Captain Loose at all, the man he is accused of having counselled and advised to destroy the ship. He is never nearer to him than the distance between London and Liverpool. That is a fact unquestioned in the case. Now, he is sought to be affected in this way—that he effected insurances, which I do not at all deny, upon this vessel and upon these goods, and that he received his portion of the insurance-money. All this may be, as I shall show you, and Patrick be as innocent as any of us. He is sought to be affected chiefly by the evidence of that young man of the name of Stott. Now, let us see whether, taking Stott's evidence altogether, it is possible for you to come to the conclusion that Patrick committed the crime alleged in this indictment. Now, I will tell you what I say with respect to Patrick and the way in which I put his case, and I shall be obliged to the learned judge for his attention for the moment. I say that it is very possible that Michael Wallace in Liverpool may have persuaded Patrick that these goods were shipped on board the Dryad, and that Patrick, on this evidence, might, up to a certain time, have fully believed him, and thereon effected the insurances. We will see whether that proposition of mine is not capable, to your satisfaction, of being most fully borne out. In the first place, it is not alleged that there was any communication whatever between Captain Loose and Patrick. It is not pretended that Patrick was ever in Liverpool during the time Captain Loose was there. It is admitted that Michael was every day on board the Dryad in

company with Captain Loose. That is admitted. Well—Mr. Stott is known to Patrick. Not to a stranger does Patrick go to effect the insurances, but he goes to a person to whom he is well known, and he has insurances effected sometimes in his brother's name and sometimes in his own. Now, what would he have done if he had been cognisant of the fraud? What would have been so easy as to have employed some third person to have effected these insurances? That would have put him in no jeopardy. What so easy, if he intended to do it in his own name, as to have gone to a stranger in place of an intimate, who might at any time have disclosed the fraud? His conduct is consistent with innocence, and perfectly inconsistent with guilt. But what more does he do? He gives letters of indemnification to the insurance offices, so that if it should turn out that any misfortune wilfully befall this ship, on the part of the captain—

Lord Chief Justice Tindal. The letter was an undertaking to be answerable if any goods were recovered.

Mr. C. Phillips. It discloses his name at all events. There is no disguise as to his handwriting; and his residence is perfectly well known. When there is a dispute with respect to the payment of, I believe, 20*l.*, out of the 100*l.*, what is the conduct of Patrick? Why, he says, "If they do not settle with me before the twelve months have expired, I will make them." This is the conduct of a man who is conscious he is making a fraudulent claim! This is the conduct of a man who is conscious that he is accessory to a great crime! He gets into a passion when they hesitate about paying him a portion of the money, they having paid him 80 per cent., which he ought to have been content with if it was the wages of fraud, and says, "If they do not pay me the other 20 per cent. within the twelve-month, I will go to law and force them." That is not the conduct of a guilty, but of a determined man, who thinks he is making a just claim. But it does not end there. Mr. Stott, in a conversation of some length with him, which is jocular in portions, talks about the Dryad and about his insurances. This is after she is lost; and he says, "I have heard of such things as vessels being sent to sea to be lost—I hope that is not the case with the Dryad." The man's manner—which was that of friendship before, that of one who thought he had a just claim against the insurance offices, who was unconscious of any guilt—instantly changed, as any one of you would have changed your manner, under such an accusation, and he goes the length of telling the friend he trusted—with whom he

was social and jocular before, that if he dares to insinuate such a blot upon his character he will kick him instantly out of the room. What would any of you have said under such circumstances? He sets his bosom friend at defiance. He sets the insurance offices at defiance. And, because such a foul crime is even whispered, he threatens to take personal vengeance, on the spot, on the man who dares to make such an insinuation against him. Could any conduct be more indicative of innocence than this? But more, gentlemen; he writes a letter, and I beseech his Lordship's attention to this; indeed, I need not, for I am convinced it has not escaped him. He makes Stott write a letter to the Consul at Cuba. Now, I say that at that time Patrick Wallace was as innocent of all knowledge that his brother, or anybody else, had associated himself with Loose to cast away this vessel as any of us, and I will prove it to you. He dictates a letter to Stott, to be sent to the authorities at Cuba—the agent of Lloyd's, I believe, or the consul, the authority whose duty it would be to make the strictest enquiry respecting the loss of the Dryad. Patrick Wallace desired Stott to write to that man. "He told me to write a letter to the consul at Cuba, which I did—this is a copy." There is a postscript, in which it is said (I do not vouch for the exact words), "This is in confidence." "I asked him the reason for the postcript—he said the reason was that the ship was chartered by Zulueta, and as they had not filled up the ship he and his brother had done so." He could not himself have done so, because he was in London; but it is very clear that he was in a situation in which the brother might have transmitted to him an account that he, the brother, did so in Liverpool—"That he and his brother had done so, and they did not wish Zulueta to know they had shipped the goods, or they would charge for the freight." Now, then, see the situation in which he is. He is here in London. He receives the communications which his brother chooses to make to him, and none other. They have had all his letters, and his brother's letters, and they have not produced a single document which would lead you to suppose he had any guilty participation in the transaction. Is not this possible enough that his brother writes to him, "Effect insurances upon this cargo of goods, or rather one-third of the cargo, which I am shipping at Liverpool; but you must keep it a secret, for if Zulueta hear it they will charge us for the freight; and therefore it is important we should keep our own counsel." Now, what was this? It is what I am

afraid is done every day. It is what the prosecutors did themselves; for they shipped a parcel of things, not very great in amount, for which they paid no duty at all. That they admit. But is not this perfectly natural?

The Attorney General. Not the prosecutors, the charterers.

Mr. C. Phillips. The charterers. Gentlemen, we ought to live in a very correct day when we are subject to be interrupted by such verbal criticism. My friends, in their abundant anxiety to interrupt me, forget that there are counts charging the prisoners with intent to defraud Zulueta, so that they are prosecutors; but may not the brother have persuaded Patrick that he, Michael, had shipped on board the Dryad the goods in question, and told him to insure and to keep the secret, as by keeping the secret they would save the freight? Can there be anything more possible than that? And mark, Gentlemen, before ever there is an accusation whispered, in the conversation between Stott and Patrick himself, Patrick tells him so. Patrick did not tell him that for self-protection against a charge not made; but he told him what clearly he believed to be the exact truth. He says, "I have desired you to add that postscript; for, to tell you the truth, my brother has shipped the goods on board at Liverpool unknown to Zulueta: if they know it, we shall have to pay freight; and that was the meaning of saying that the communication was to be in confidence." If this had been said after a charge had been made of conspiracy with Loose to destroy the Dryad, you would have said it was a cunning after-thought. But there is no charge made against him at the time. He is not interested in telling an untruth; and is not the story he tells perfectly natural and possible? Would he have desired him to write to the Consul at Cuba at all, if he had not believed that what he stated in his letter was true? Why should Patrick, of all people, have any enquiries instituted about the ship which he had been a party to the destruction of? It is not at all consistent with guilt, but it is perfectly consistent with the tale he told Stott at the time. Then, Patrick Wallace is represented as having said, "The captain is a clever fellow, and I will give him another ship." What was he clever in? Why, in smuggling a third of the cargo on board without the knowledge of Zulueta, thereby saving the freight; his brother Michael having declared to him that those goods were on board. How was Patrick to know that what his brother told him was not true? He is seized unawares in London. If any

guilty communication had come from his brother, would not documents have been in his house or desk, to give some scintilla of evidence as to their conjoint guilt. The prosecutors get into his house unawares. They have the opportunity of ransacking his things. It is clear he did not fly. He was on the spot. He knew not that attention would be directed to this matter, and would you not expect that one scrap of paper would be produced to shew his guilt? It is not said here that he has destroyed any papers, as they say of the poor dead captain, whom they represent as having torn some leaves out of the log-book—with having put them into a cigar-box, and thrown that into the sea—a strange invention for a person capable of the conception and execution of such a cunning crime as this! What! Had he no fire in his cabin to burn these guilty pieces of the log-book? Is it likely that if he wanted to destroy them he should have placed them in a cigar-box, in the transparent sea, when all the crew had to do was to look over the poop of the vessel and see it below them? or would he not rather have put it out of the power of any human being to discover them, by at once reducing them to ashes? As to Patrick Wallace, he, you may be sure, was given no warning that the officers of justice were to arrest him; and there was his abandoned house, open to the ransacking of the prosecutors, and not one single tittle found there has been produced against him to-day to give a colour to the crime he is accused of. My friend reminds me, and it is well worthy your consideration, that with respect to this very letter which has been produced against him to-day, so little able was he to conceal anything, that they actually found a copy of it in his portfolio. I do not blame them for producing it; but what I say is, that if they could have found anything that would have stamped guilt upon him, they would not have kept it back. Is it not fortunate for us that Stott was here to tell you that at the moment he was writing that letter, when no charge was made against him, Patrick gave that most natural solution of the letter to Stott upon the spot—"We did not wish Zulueta and Co. to know that we had shipped goods on board the Dryad, or they would charge the freight." Now, there is the letter, and that is the only document upon which it is sought to criminate him. I leave it to you whether it is not open to the construction which he himself put upon it to Stott.

Gentlemen, it appears, according to the testimony of Stott, that whether by the flight of his brother (and the period of his

flight does not exactly appear), or by what other means, Patrick, being made acquainted with the accusation made against Loose, stated that he was afraid he might be transported; and well he might have that fear, when he found such a charge as this vamped up against him, on evidence such as that which you have heard. But it is obvious as the daylight that before that, he had no notion that the goods were not on board. He said so to Stott when he used that expression. He told him so when he was writing the letter to St. Iago da Cuba, and he afterwards said, "Stott, I am sorry for you—you are only an agent;" what is there to prevent Patrick from being an innocent agent as Stott, it is conceded, is? Patrick acted openly with Stott. Stott effected all those insurances. They thought, at first, that Stott was guilty, for they took him up upon the charge. There is no more evidence against Patrick than there is against Stott; Stott was never in Liverpool—Patrick never was in Liverpool. Stott never communicated with Loose—Patrick never commnicated with Loose. Stott acted openly—Patrick acted openly. Stott never endeavoured to abscond — Patrick never endeavoured to abscond. There is no document to convict Stott—there is no document to convict *him*, and the only evidence against him is, that he effected these insurances in London; and you are asked to infer from that, that he must have known that his brother was committing this great crime in Liverpool. But even that would not do, if he knew afterwards that his brother had committed the crime in conjunction with Loose, that would not render Patrick amenable to this indictment, for *after*-knowledge is not *fore*-knowledge; it is not counselling Loose to do it before he did it; therefore, if you take it to the utmost extent that, after his brother had committed this crime—if he did commit it, he communicated to Patrick the fraud of which he had been guilty—even then it would not make Patrick guilty, for this reason, that he is accused of counselling Loose beforehand, and his knowledge after Loose had sailed, that he intended to do it, I submit to you, confidently, would be no proof whatever upon this indictment of guilt as against Patrick.

Now, Gentlemen, I submit to you, that all through this transaction, it is possible enough that Patrick may have been the dupe of his brother; I do not mean to say he was, because, God forbid that I should say his brother was a guilty man. Another Jury will, by and bye, have to try the question of his guilt or innocence, and it is not for me to pre-judge him. But

I do say this, that even if you suppose the brother was ever so guilty, it by no means involves the guilt of Patrick, because, if the brother be a guilty man, of couse he is capable of much crime—capable of much hypocrisy, and capable enough, therefore, of duping his brother. Now, what turns out? For the impulse of men on the moment is always to be watched and weighed well by a Jury. What is the outcry of that man almost the moment after he is taken up? "They have taken the innocent," says he, and with grief he adds, "they have let the rogue escape—that rogue, my brother." In the bitterness of his spirit, finding himself or supposing himself to be the dupe of that brother, he reluctantly accused him. Was the accusation without foundation? The brother fled; and what says the witness Stott, the man through whose agency they seek to convict him? "Upon my oath," says he, the same oath upon which he was giving evidence for the prosecution, "Upon my oath, I believe he was the more innocent man of the two—led into the scheme by his brother, and his dupe, for, from my foreknowledge of him, I do not believe him capable of such conduct as that which is imputed to him here;" so here you have Stott himself on the oath, on which it is sought to inculpate him, declaring what you heard him declare—you have the young man himself doing all he could, calling out—"I am an innocent man—I am a dupe—I have been led, not into crime but into error (for that is the phrase) by my brother; he has fled—the officers of justice ought to be after *him*, in place of taking *me* up." Is it not possible, and probable, under all the circumstances, that this may be the case? Gentlemen, if it is, will you send, without character, to exile, a hitherto spotless and untainted man? Did these persons abstain in any one point from seeking to overwhelm him with proof? His sisters were taken up—those who had been about him, who could have watched his footsteps in London—who could have known his acts, and who, very likely, were in his confidence. The wife of his brother was taken up. That is in evidence before you today. If there was one tittle wherewith to connect him with Michael's guilt, if guilty be Michael, why not put those sisters in the witness box? Oh, they were too humane to do so! Aye? That humanity was checked when they tore them from their dwelling; when they tore the wife of the absent Michael from her dwelling, and kept her—*they* know how long—in the tortures of suspense. Therefore, I give them no credit for

humanity in not putting those witnesses into the box; for all that could torture their feelings has been done, and they are absent to-day, on the part of this prosecution, for this single reason, that the prosecutors know full well that their evidence in chief could not convict their brother, and that their cross-examination must acquit him.

Now, Gentlemen, my friend reminds me, while I am on this part of the case, and I should be culpable if I omitted it, that to Stott the communications of Patrick have not been solitary. It is for you to say what weight is to be given to them. You remember the important conversation which Patrick had with Frost. Whatever fault I may find with some of the conduct of those who conduct this prosecution, my friend, at least, has been candid in getting that conversation placed in evidence before you; because, I believe, that in law I should not have been entitled to it myself, as it was what my client said. I have said that the conversation with Stott was no afterthought. I have said it was a *bonâ fide* communication. What says Frost, another witness against him? The communication made to Stott, was before there was the shadow of a charge breathed against Patrick. The communication made to Frost was afterwards, I admit; but see whether the two communications differ. Truth must be consistent. We will see whether this is true—"After Patrick Wallace was taken, his sisters made a communication to me—I think that was about a week after he was taken. I saw Patrick on that occasion, and we talked over the subject of this charge—it was a friendly conversation."

The Attorney General. He did not say all this.

Mr. C. Phillips. I have made a mistake, Gentlemen, by reading a little too much of his evidence. I really thought he had said it. This is where he began. My friend need not be so angry, but you may just blot the trifle I have read out of your minds, and come to this,—"I said I was sorry to see him in the situation he was in." Why sorry? Because he knew his previous respectability. "He declared to me, that he was an innocent man, and that his brother was the man that they ought to have taken; that he was a big scoundrel, and had led him into this error; and that he knew not but what the goods were shipped on board the Dryad, as were supposed to be shipped." Now, Gentlemen, what have you before you to induce you to say, on your oaths, that you believe that to be false? He was at a distance from Liverpool at the time the vessel sailed. He was in London.

He was capable of being made the dupe of his brother, who was on the spot. He never, according to the evidence, had one syllable of conversation with Captain Loose in his life. It is clear that, during the shipping of the goods on board the Dryad, he never was on the spot, and it is in evidence that his brother was on the spot all through. He exclaims against the deception his brother had practised on him. He acts in a manner totally inconsistent with guilt, in causing a letter to be written to the consul at Cuba, after the loss, which letter alone would have caused an investigation on the spot by the consul. There is everything in the character and conduct of this young man which renders this case perfectly compatible with his innocence.

Gentlemen, it shall not be left on the testimony of the witnesses for the prosecution, with respect to his character. I shall call many who have known him long.

The Attorney General. I think it fair to you to say that if you do, I shall cross-examine them.

Mr. C. Phillips. Gentlemen, I am told by my friend, and I am told kindly, and I saw the suggestion too at which it was done, that he will put some questions on cross-examination to the witnesses I call to character. You will remember that their own witnesses give my client a character. I do not know what their suspicions may be, but they are perfectly at liberty to put what questions they like. Even if he had no character, except that which has been given him by the witnesses for the prosecution, the case stands on its merits, and it is by its merits that it is to be judged of, independent of character. I was afraid that my friend was going to make a communication that sometimes has been made to me in this court, that if I called witnesses to character he would reply upon me. I acquit him of doing any thing of the kind: indeed if he did I might well say, as I heard him say in the other court of this very bill which he panegyrised to-day, that under the circumstances of its enactment it was a curse to the country. I am sure my friend remembers the case of Williams, and I am sure he never would reply on the evidence of witnesses to character. Of course, if witnesses came to forswear themselves, and to give a man a good character who deserves a bad one, I cannot help it. I believe this young man, before this charge was brought forward, never was accused of any offence. I know perfectly well, that every effort that money and malignity combined could make use of has been used by these insurance offices. I dare say they have ransacked into

his whole life—they may put what questions they like—I will call witnesses to character undeterred by any threat. I do not however think it at all necessary, for his character has been already given, and that too by his enemies; and because if there were not a single witness to his character, the case stands on its own merits. That cannot be got over.

Gentlemen, I have laboured this, I am sure to my own great detriment, and I am afraid in some degree to your weariness—but I cannot help the zeal that induces me sometimes to overstep the boundaries both of patience and discretion, when the fate of a fellow-creature is entrusted to my hands. If it be a fault, it is one that I am perfectly satisfied to be accused of. It has been made a subject of accusation against me, and as long as I live I shall render myself liable to such an accusation, because I consider it my duty. I have to-day entrusted to my hands the fate of a fellow-creature, up to this hour as I am told, and as I believe, blameless. I have opposed to him a host of wealth, and influence, and talent, and learning. He has nothing but my humble exertions to depend on. He has a right to them, and he has had them such as they are. Not *his* fate alone has been entrusted to me, to-day, but, collaterally with his, the fate of the dead. You are asked to-day not only to convict the living, but to dig the dead out of his grave for the purpose of branding felon on his brow, on the polluted testimony that has been called before you. Gentlemen, it is repugnant to every principle of British justice to do that which you are called on to do to-day—to condemn a man in his absence and unheard. You are called on to do it by the Attorney General, who tells you that if he does not establish what he calls the *corpus delicti* in the person of Captain Loose, he cannot expect to convict my client. Therefore, you are called on with one breath to blast the reputation and damn the character of the living, and to dig up from the grave the corpse of a dead man for the purpose, on such evidence as this, of stamping it with infamy. In the sacred name of justice, which is due both to the living and the dead, I call upon you to repudiate a charge attempted to be sustained by evidence such as that which you have had laid before you. I thank God we stand here in an English court of justice, unpolluted by foreign practices; and I have no right to close this case to-day without thanking my Lord that much has been excluded which ought never to have seen the light—which illegal as it was to hear, it was still more atrocious to publish, and which, if through the

press it happens to have met your eye, can have met it only to put poison into your minds, and to excite prejudice against these unhappy prisoners. I call upon you to dismiss it altogether from your minds, and I feel assured you will do so. I pray you to attend to the evidence you have heard to-day, and to the just and humane direction which I am sure you will receive from my Lord; and whoever else may suffer, I can have no fear as to the fate of a young man, who never till this hour was tainted with any accusation.

MR. WILLIAM CARPENTER, sworn,

Examined by Mr. Doane.

What are you? — An engraver.

Where do you live? — No. 5, Great St. Helen's.

How long have you known the prisoner at the bar—Patrick? — I have known him personally—intimately for six years.

Having known him intimately for six years, I ask you what character has he borne during that time for honesty? — The most perfect character.

Cross-examined by the Attorney General.

Did you know anything of a ship called the Delta? — I knew the ship—that was all.

Did you not know that that ship was commanded by his brother Michael?— Yes.

And that Loose was the mate? — That I did not know.

Do you know what became of that ship? — I understood she was lost.

Did Patrick ever tell you whether he had effected any insurance on goods, on board that ship Delta? — Never.

Never told you one way or the other? — No.

You are sure of that? — Confident.

He never mentioned whether he had goods on board, or not goods on board? — Never.

Or of having effected any insurances on board the Delta? — No.

You never heard him mention either one way or the other? — No.

Do you know anything of a ship called the Lucy? — No.

Do you know Mr. Houston Wallace? — No.

You know Michael, I suppose? — I know Michael.

But you know nothing of a ship called the Lucy? — Nothing whatever.

Never heard of such a ship? — I have heard of her, but know nothing of her.

Have you heard of her being lost? — Yes, by reading it in the papers.

Did Patrick never say anything to you about the Lucy? — He may have mentioned it incidentally—nothing more.

Did he mention the loss to you incidentally? — I believe it might be so; I am not quite sure.

Not quite sure? — Not quite certain of it.

Not quite sure? — I will say so directly.

Say what directly? — That the ship was lost.

Did Patrick tell you that the Lucy was lost? — Yes.

When was it mentioned to you? — I cannot tell; sometime during the last year.

Did he mention to you he had any insurances upon the Lucy? — No; I am not all acquainted with this business.

When did you hear of the loss of the Lucy? — During the examinations at the Mansion House

Had you heard of it before? — Never.

When was it Patrick mentioned to you the loss of the Lucy? — He never mentioned it at all.

He never mentioned it to you at all—you said Patrick had mentioned to you incidentally the loss of the Lucy? — No; I never heard of the Lucy previous to this case coming on.

Did you never hear Patrick mention the Lucy? — Never.

And you never had any conversation with him about the loss of the Lucy? — Never at all.

When did you hear first of the loss of the Lucy? — At the time of one of the examinations at the Mansion House.

Do you know whether Patrick had any interest in that ship? — No.

You never heard him say so? — Never did.

Re-examined by Mr. C. Phillips.

Do you not know that Patrick has been in prison ever since the examinations at the Mansion House? — Yes.

Did you ever go to the gaol to him? — I went to him in the Giltspur Street Compter.

And he never mentioned a word about the Lucy to you? — I do not think he did.

Did you hear within a short time of the loss of the Governor Fenner, lost in the Channel? — Yes.

Did you hear whether he had any goods insured on board of her? — No.

Mr. C. Phillips.—That is the case, my Lord.

SUMMING UP.

Lord Chief Justice Tindal. Gentlemen of the Jury:—The prisoner at the bar, Patrick Maxwell Stewart Wallace, is indicted for a felony, which is stated in substance upon the face of the indictment to be, that he incited and procured a person of the name of Edmund Loose, the captain of the Dryad, to cast away and destroy that ship; and that he did this with intent to deceive and defraud various persons whose names occur upon the face of the indictment. First of all, it is stated that he did it with an intention to deceive or to defraud the other part-owners of the ship. Then that he did it to defraud the underwriters upon that ship. That he did it also to defraud underwriters, who are named in the different counts in the indictment, upon the cargo, the freight, and upon the outfit of the ship; stating in the different counts of the indictment, the persons who had effected the various insurances, which have been given in evidence before you. And what you will have to say upon the present occasion is, whether you are satisfied, upon the evidence brought before you, that the prisoner is guilty of that charge of procuring the captain of the ship to cast away and destroy the ship, with any of the intentions that are specified in the indictment. It is not necessary, for the purpose of proving the guilt of the prisoner, that he should be shown to have had all these various grounds of fraud in view at the time; but it is sufficient if any one of them is made out to your satisfaction. The charge would then be substantially proved against him.

You have heard much in the course of the learned counsel's address to you, that you cannot, upon the present occasion, find your verdict of guilty against the prisoner at the bar, without also finding that Loose, the captain of the ship, is also guilty of the offence of wilfully casting away the ship. Undoubtedly that

is true; you must be satisfied of that which is the *substratum* of the offence, that the captain of the ship did wilfully cast the ship away with a wicked intention to defraud persons interested in it, or the underwriters who had insured it; but I do not see upon the evidence, that one ground which the learned counsel has frequently repeated before you, really exists in the case, namely, that Captain Loose you are to consider as actually dead; for upon the evidence before us, I should rather say, that the balance of the testimony is that he is alive and not dead; because both from the evidence of this morning (for the only witness who spoke to it says, that his belief is that Captain Loose is still alive), and from the evidence of Stott, given yesterday, while detailing conversations with the prisoner, it appears that although at one time he believed he was dead, at a later period he believed he was alive. But it does not seem to me to be at all material to the present enquiry, whether he is alive or dead;—if he is alive, he could not have been a witness on the present occasion, being included in the present indictment; and if he is dead, still the guilt of the prisoner must be inquired into by such rules and laws of evidence as are provided for it; and it having been found to be detrimental to the cause of justice, that where a principal felon, either by keeping himself out of the way and not becoming amenable to justice, or by his death, could no longer be punished in the manner in which the law intended he should be, for the offence committed by him, it has been provided by a recent act of parliament, that if the principal person is not brought to justice at the same time, still that a substantive charge may be made against the person who was the accessory before the fact, and he may be tried equally, whether the principal is or is not amenable to justice at the time. Therefore, laying out of view the fact that is not proved before you, or any inference attempted to be raised upon it, as to the death of the captain of the vessel, you must carry in your mind that the full extent to which I go with the prisoner's counsel is, that you must be satisfied that the captain did commit the wicked act of destroying this ship voluntarily, with the intent imputed to him in the indictment—either of defrauding the underwriters, or the owners of the cargo or freight, before you can return a verdict of guilty against the prisoner.

Now, the question will embrace three principal points, to each of which your minds must be directed; and, in all of which you must concur in opinion, that the party charged with this offence

is guilty, before you can find him guilty upon the present indictment:—First; you must be satisfied, as I before stated, that the ship was wilfully cast away by the act of the captain;—then, you must be satisfied that this was done with the intention imputed to him in the counts of the indictment—that is, either to defraud the underwriters on the ship, cargo, or the freight, or to defraud the joint owners of the ship;—and, lastly, you must be satisfied that the prisoner at the bar did incite, procure, counsel, or advise the captain to commit this wicked act, with the intention imputed to him upon the face of the indictment.

Now, Gentlemen, before I come to that which certainly is the main and principal point,—whether the captain was guilty of this charge or not,—I will, as shortly as I can, state the substance of the documentary evidence which was given before you in the course of yesterday; because I think it will appear much more clearly and satisfactorily to your mind by a brief statement of it than by going through the documents themselves, which, in detail, would rather create a difficulty and embarrassment in understanding it, than any clearness as to the facts.

It appears, Gentlemen, that the ship itself, which is the Dryad, was chartered upon the 25th July, 1839, by merchants at Liverpool of the name of Zulueta and Co., and that it was chartered on a voyage outward to Santa Cruz, in the island of Cuba, to take a cargo out for a lump freight of 300*l.*, and then to return again with a homeward cargo, I suppose, if she could get it. It does not appear by the charter that Zulueta and Co. had any concern with the ship on her return on the homeward voyage; and that being the case, they might fill it up, if they had not got a cargo, with what they pleased—if they were to have it, they would fill it up by advertising it as a general ship; at all events, the agreement between these parties was, that there was a lump sum of 300*l.* to be paid for the outward freight. Now, that being the state of the case, of course the owners of the ship had a just right, not only to insure the ship itself, but a right also to insure the freight they were to make by it; and so Zulueta and Co., when they had put their cargo on board, would be thoroughly justified in doing what they did—insuring that cargo for its safe arrival at its point of destination. There are, therefore, in the multiplicity of the different policies of insurance brought before you, three that may be laid quite out of the question, as not being at all necessary for you to consider; but being insurances that would occur in the ordinary course of business,

which the parties would have a just ground for effecting, and which would confer a just right on them to recover if a loss ensued. Those three policies are, first, that effected for 2000*l.* on the ship with the Marine Insurance Company, on the 10th of August; then, a sum of 300*l.* on the chartered freight which was insured at Lloyd's, on the 7th August; and, a policy effected by Zulueta and Co., on the 7th September, 1839, for 3000*l.* We may assume that to be the value and amount of their goods; therefore, let us lay that out of our consideration, and do not let it affect your minds when considering the number of other policies which I am about to bring under your attention. I will only observe, that that policy of Zulueta's was effected just at the time when you would naturally suppose it would be. On the 7th of September the ship left her dock and got into the river; and, on that very day, Zulueta and Co. effected their policy.

Gentlemen, it appears that, besides these three, there are seven other policies effected either by the prisoner at the bar, or by his brother; and I shall now briefly call your attention to them. There is a policy effected upon the 24th of August, for 715*l.* on goods; that is effected with the Alliance Insurance Company. There is another policy effected on the 7th of August, on goods specified in the policy, for 1265*l.* with the General Maritime Assurance Office; and upon that policy I must, before I have finished, make a few observations to you which must be a little more particular, because it is not unimportant, when you are considering the innocence or guilt of the prisoner, to advert to the fact, that the goods which are the subject matter of that policy are actually specified in the policy itself that is effected by the prisoner at the bar. Then, on the 12th of August, there is another policy effected at the Neptune Office, on the ship and outfit, for 700*l.*; on the 17th of August there was another effected for 700*l.* at the Neptune Office for the chartered freight. Then there was another on the 21st of August effected by the prisoner with the same office, the Neptune, for 685*l.* on goods specified in the policy, and the observation I made with respect to one of those effected by him, will also apply to this, which is, I believe, the only other one, personally effected by him, the goods being specified in each instance on the face of the policy itself. Lastly, there comes another on the 19th of August, effected with the Indemnity Mutual Assurance Company, which is said to be upon freight, for 600*l.*

Those are the policies that have been effected, certainly to a much larger extent than the interest of the party would seem to require, or indeed would authorize; but they might be treated, perhaps, if the matter rested merely on that consideration, as mere over assurances; where, if every body had his right, the insurer would only have a right to recover for the real value of the goods.

The Attorney General. Your Lordship will excuse me for reminding you, that there was another policy also for 500*l.* effected at Liverpool in the Ocean.

Lord Chief Justice Tindal. There is also another policy, in an office called the Ocean, for 500*l.*, effected by Mr. Bahr a day or two before the ship sailed from Liverpool.

Now, Gentlemen, that is the state in which the parties stood with respect to these policies. And the question you will have to determine is, whether, having first ascertained that the ship was wilfully cast away by the captain, there was any intention to defraud any of the Underwriters upon these various insurances? I have called your attention to two policies in particular, because it will not be an immaterial circumstance when you are weighing the testimony as to the prisoner's freedom from guilt on this accusation, to see whether he was aware at the time, that, with respect to two of the policies he effected himself, there were no goods delivered on board that corresponded with the specification contained in them. You will have to say on the evidence you have heard, whether you are satisfied that, in point of fact, those were policies upon supposed and fictitious interests only, and not on any real interest by putting goods on board which answered the description given in the policies themselves. The first question, therefore, which I call the substratum of the whole, will have to be made out to you; and you must exercise your judgment upon it, first, from the direct testimony given of the conduct of the captain during the progress of the voyage, and at the very period of time when the loss is alleged to have taken place; in which investigation you will, of course, not lay out of your thoughts the imputation which has been cast against the witness, and the only witness, to the very fact of casting away and destroying the ship, namely, Schultz; but you will also, at the same time, take into consideration the other circumstances of the case, and see whether they do or do not corroborate, or confirm the account he has given to such an extent, that you feel warranted

in believing him. The first ground will be the direct testimony; next, that which is furnished from the state in which the parties were at the time, and with respect to their effecting insurances upon the property in question, whether there was any interest at all that could induce them to commit an act so wicked in itself, and also so great a breach of a law that is very serious in its consequences. You have also to consider the accounts which the prisoner at the bar has himself given in the various conversations that have been detailed to you, in order to have the whole matter before you as to what was passing in his mind at the time, with respect to the transaction now under investigation.

Gentlemen, when you have once ascertained in the affirmative —for there is an end of the case, if you do not believe the ship was wilfully cast away—when you have once ascertained in the affirmative, that it was wilfully cast away, then comes the question, which will come back to those various points to which I have called your attention, whether it was done with a view to the defrauding of the parties to whom reference has been made, and whether the prisoner did in fact invite the captain to do this act? If upon any of these points you are not satisfied in the affirmative—if you feel a reasonable degree of doubt whether the case has been made out against the prisoner at the bar—you will then say to yourselves, 'The prosecutors have not made out such a case as calls for a verdict against him,' and you will acquit him of the charge. On the other hand, if you are satisfied, looking to the whole of this case from beginning to end, that the prisoner had distinct knowledge of what was going on, and was a party concerned in inciting the captain to commit this act, then your duty, however painful it may be, will be to convict him of this charge. It is not absolutely necessary that it should be proved that the prisoner at the bar has received profit from the act which he is charged with having committed, but, at the same time, it is difficult to see any reasonable or fair ground on which to accuse a man of so gross and wicked an act as that which is charged against him, unless he was to reap some benefit from it. Therefore you will see how far the evidence satisfies you, that he, upon the occasion in question, knowing the real state of the facts, and that there were no goods that belonged to him or to his brother on board the vessel at the time, still received from some of the offices a portion of the money paid by them for the supposed loss; and it will be for you to say whether that surplus was an

adequate motive in your mind to induce you to consider he may have been guilty of the crime imputed to him?

Now, the direct evidence that bears upon the subject of the loss of this ship begins with Captain Tait. The course of the voyage you will observe is this—the ship sails upon the 7th September, I think, 1839—she arrives close to Cape Hayti, on a reef, on the 23rd of October, and after that she sails to Cape Cruz, which is in the island of Cuba; and there it is that she receives, according to the evidence of the witness Schultz, her death-blow, and there she was left, the crew escaping to Jamaica on, I think, or somewhere about, the 10th or 11th of November. Sailing from Liverpool on the 7th September she gets upon the reef, where she is left, at Cape Cruz on the 10th or 11th of November following.

Now, the direct evidence that bears upon that, is the testimony first of Captain Tait, and afterwards of Schultz and Maxwell; and then I must call your attention to the account the prisoner at the bar has himself given of this transaction to some of the witnesses with whom he has conversed on the subject.

Now, Captain Tait, who gave his testimony yesterday—the last witness who was called in the course of yesterday—tells you that in 1839 he was master of a vessel called the Bencoolen, bound from La Guierra, to Cape Hayti—on the 23rd of October, in that year, the Bencoolen was off the harbour of Cape Hayti—his ship was 402 tons burden—he says, "Off the harbour we were boarded by a pilot-boat—there were three pilots came on board—there was a reef of rocks in that neighbourhood, about two miles and a half or three miles from us—I observed the Dryad to the eastward—she was going right stem on to the reef—they are laid down in charts, and well known to mariners—they are laid down, he says, on *this* chart—she was running on right towards the reef"—he says "they form the outside part of the harbour, and extend about fifteen miles down to the eastward—we watched some time to see if the brig would alter her course, but she did not, and, in order to call the master to a sense of his dangerous state, I fired a gun by way of a signal—he paid no attention to it, but still went on—I directed the pilot to go away in his boat directly and board the vessel as quickly as he could, and he did so. The captain of the brig did not alter his course till after the pilot had boarded her—she was steering up to that time right in the direction of the reef—it was a light westerly wind at the time—the wind was very light—she was

then under sail—there was a light wind—she could have avoided the reef of course—she altered her course when the pilot came on board—I was afterwards on board and observed the rudder was unshipped and a jury rudder had been made—a day or two after I attended a survey on board the vessel—the brig was surveyed and certain repairs were done—I remained about seven weeks at Hayti—the brig remained a fortnight—I saw the brig there every day and saw Loose—I saw the mate after I got to Hayti—he applied to me for a berth, and assigned a reason for it—I met the captain with the chief mate—the captain paid the mate his wages and discharged him—the captain asked him his reason, and he gave it him, and on his doing so I gave him a berth—some of the crew made complaints in my hearing—she left to proceed to Cuba—about a fortnight or three weeks after she left, I heard of the loss—about three or four days after that remark, I heard of the loss—when I was on the hatchway I could see down into the hold, and, according to my judgment, she was then about two-thirds full." That applies to the other part of the case, whether the goods were really put on board, that were the subject of those other insurances effected by the prisoner. This is the evidence of a person named Tait, an intelligent man, who gave his evidence very properly, in which he states a certain condition of danger in which this ship was placed, and according to his judgment a very improper one, and one that he could not reconcile with the duty of the captain at the time, in taking the course he was then about to take, with a reef of rocks, as he says, before him, marked in the chart, and inattentive to signals that were fired and made by waving flags before him, and not, indeed, turned from his course until the pilot actually got on board and, in a manner, compelled him to change the course he was at that time pursuing. The ship was not lost there, and, therefore, that, of itself, would not be enough—you have a right, however, when considering the evidence in the case, to take the whole of it, and see what the conduct of the captain was in the course of that voyage. On the part of the prosecution, they desire you to infer from it that he was a person who had set his mind really upon the intention of destroying the ship, though he did not effect it then. On the part of the prisoner at the bar it is said, it amounts to nothing at all, and that it was a mere oversight of the moment, or, if anything, that it was the wilful act of the crew who were combining against him, and not any wicked design on the part of the captain himself.

The next witness they call is Ronald Maxwell; who says, he sailed as first mate in this voyage, from Liverpool to Santa Cruz; and Captain Loose engaged him in Liverpool, on the 4th September, 1839. He says, "We went from Liverpool to Santa Cruz—from thence to St. Iago da Cuba"—that is the voyage he was engaged on:—"This was a voyage from Liverpool to Santa Cruz, thence to St. Iago da Cuba, and thence to Swansea. I have been brought up to sea, and have commanded a ship in South America, and have crossed the Atlantic frequently. I have been to the West Indies, and am acquainted with the navigation of those seas. On the 4th September I was in the hold of the ship. After I joined there were a few cases of hardware, and a few kegs of paint put on board." This, however, applies to another part of the case—you must bear it in mind, and endeavour to separate one part of the evidence from the other—it applies more particularly to that part of the question which you must bring to your mind, whether these goods were really put on board or not; it being, on the part of the prisoner, contended that they were so put on board. "A few kegs of paint and cases of hardware were put on board after I came to Liverpool. I signed bills for Zulueta and Co., and no other goods were received after I joined, I am quite confident. I locked the ship up every night when I left, and opened it in the morning. One-third of the ship remained unfilled. After the 4th September there were no crates of earthenware put on board—no cases of flannels—none of cloth—no tierces of beef—neither were there barrels of pork, nor any firkins of butter—there was nothing of that sort except those for the ship's use, and they were on board before. I saw the hold every day till the ship actually sailed. I am sure no goods were put on board after the day I joined. On the day I joined she was ready for sea, except some repair wanting to the fore-mast. We had two tierces of beef, and four barrels of pork for the ship's use, and this is a scanty supply even for the outward voyage. I have always seen a ship provisioned for her voyage out and home for the last fifteen years. She had not provisions for the outward voyage. She sailed on the 7th. We had ten hands in all, including the captain. We made Carlingford light. The captain directed me to get tackles rove in the long boat, and ropes coiled in her, so that if we wanted her she might be got quicker into the water. We had no log line. I endeavoured to make one of spun yarn, but it was too heavy. I found the larboard pump choked the first time that I endeavoured

to sound the pump; this was a short time after we got to sea. I tried to clear it out, but was unable to do so. I told Captain Loose—he said nothing in particular. This was the larboard pump—it was never made use of afterwards. I have applied to the captain frequently to make use of the chronometer—he would not allow me to see it. There is generally one track laid down on charts as our guide. Captain Loose followed that track part of the way, and then deviated from it, about longitude 57 west; he rounded then to the northward. We first made land at the West Indies, in the Virgin Islands. I told the captain I could see the land—he came up and remained about five minutes, and then went down again. Shortly afterwards, we saw breakers a-head. There was low land about five miles from the breakers when we first discovered them a-head. I went down and told the captain. He was in bed. This was between six and seven. Benjamin Schultz, one of the seamen, was at the helm. I told the captain I could see breakers a-head. I said nothing more. He got up and followed me. I told the man at the helm to put the helm down and let the ship go round. The captain ran to the wheel, and hove the helm up again, the effect of which was to keep the ship direct for the breakers. He remained at the wheel a short time. Hunter and Simpson, two of the seamen, came to the waist and complained to the captain, and said if he did not put her about they would take charge of her themselves, and that they were not going to be lost. The captain then left the wheel, and Schultz, the carpenter, took the wheel again, and put the helm down again, and the ship came round."

Again, Gentlemen, this is not the very occasion on which the ship is cast away—this is a short time before it takes place; and undoubtedly the prosecutors of the indictment have a right to submit it to you for your judgment on these facts, not at all as amounting to the offence charged in the indictment, for that is actually destroying the ship, but as shewing an *animus*, as they contend, on the part of the captain, and that he had some wicked intention in his mind to destroy this ship, as safely as he could as far as the lives of the crew were concerned, but to destroy it as they allege and charge in this indictment with a view of defrauding the underwriters left at home—that is the object with which it is said to have been done.

He says, "The ship just cleared the breakers and nothing more—she would have been on shore in a few minutes: after she came round the captain mentioned to me he did not think she

was so near; he told me first when he came on deck to mind my own damn'd business, and to take the studding sails in; he said he would have me tried for mutiny in taking charge of the vessel from him—this was on the 17th of October: we proceeded on our course; on the 19th of October we were on the Silver Keys; I consider he ought to have gone to the south of that place, and to have gone between Antigua and Guadalope—that is the usual way; if she went to the north side she ought to have been nigher to the shore—it is laid down on all the charts; on the 19th of October we were off the Silver Keys, and between six and seven in the morning, the first thing I observed was a rock about three or four hundred fathoms off; I mentioned it to the captain—I pointed out the rock to him—it was easily to be discerned; he said he could not see it—I could see it with my naked eye—he had a glass in his hand. One of the crew in the fore-yard cried out, "rocks under the fore-foot"—I ran forward and the captain likewise; I saw the rocks—the captain said "we are all lost—we are all lost!"—immediately after this the ship struck; we remained till about twenty minutes, cleared away the boat, and he ordered the jolly boat to be put over, and we got tackle to put over the long boat to save ourselves; after about twenty minutes she dragged off the rock, the sails being all set; she had suffered no injury at that time—she made no water—she went on for a short distance and struck another rock—she remained for a few minutes only and dragged herself from that. The captain was in the cabin whilst the ship was striking—he was putting a life-preserver on during part of the time. By the second shock the rudder was disabled. Two of the pintles of the rudder were broken. We had trimmed the sails to keep her before the wind. I applied to the captain whether I might not take the main boom, or sprit sail yard, there being no spare spars on board to make a temporary rudder, which he refused. He said we were in a nice predicament—a ship at sea without a rudder. It would have been better if we had been all asleep, a day or two before, and let her go ashore at Anagada. Afterwards we made St. Domingo. The carpenter made a temporary rudder. We made the harbour of Porto Plate. We proceeded close along the land up to the 22nd. In my judgment it would have been proper for him to have gone with a greater offing. We were in danger of getting among the breakers. In the afternoon of the 22nd, we were close in to a reef that lies near

the harbour of Cape Hayti. The jury rudder was unshipped; the captain gave orders to the sailors to keep her out to sea. He asked me what I thought the best to be done. I told him there would be no danger in towing her into the harbour. The wind was fair for that. He told me to go forward and ask Schultz, the carpenter, and Davies, for their advice. They came to the captain and said the harbour was before us, and they thought we might get in. He said he would not—there was no pilot on board, and if anything happened to the vessel he would lose the insurance. I told him the only plan was to re-place the jury rudder and get in, in the morning. The captain went to bed at eight o'clock. I saw a sail at nine; I mentioned that to the captain, and he came on deck. I said she looked like a large ship, and probably it was a ship of war, and would give us assistance if we would run down to her. We could have done this easily—gone down before the wind. The captain would not allow us, and said he wanted nothing of her. The captain went to bed, and told me to call him at twelve. In the morning we were at the south-east of the entrance to the port. I saw another ship in the morning. At that time we were steering towards the reef. I could see the breakers a-head. The captain was on deck about seven in the morning. At that time we were steering towards the reef. At that time the ship we saw to the northward fired a gun."

This of course is the Bencoolen, Captain Tait, from whom we have heard an account before. "I understood by firing the gun it was a signal that we were running into danger. The captain of the Bencoolen had a signal, viz. a union jack, hoisted for a pilot. I was not allowed to put up a signal. The captain said, 'If they are too lazy to come off without a signal, let them stop where they are.'"

Gentlemen, there is a point in contradiction in this case, whether there was a signal put up or not? This person, named Maxwell, says there was no signal. Schultz also said there was not a signal; but Schultz is contradicted by that protest to which he gave his oath, after the parties got to St. Domingo. Therefore, the case certainly stands on better grounds by considering how it places itself before you without the evidence of Schultz, than with it; but as far as he is confirmed by any other evidence, his swearing it, will not make it less true than it was before. This person, Maxwell, swears he was not allowed to put up a signal, at the time, for a pilot. You must, therefore, leave that as you

find it. "The pilot came on board about 11 o'clock in the forenoon. At that time the Dryad had not altered her course. The captain called him on board and asked him if he would take charge of her, and take her into port. He said he would, if the crew would work under his command. The Bencoolen was probably three miles off."

Gentlemen, this conversation has been commented on as if it was something very remarkable that the pilot should be obliged to make it a condition, that if he should carry the ship in, the seamen should work under his command. You must judge whether it was more than this, "If they will so trim the sails as to supply the want of a rudder, then I will take her in. I know the bearings of the harbour—the reefs, and the rocks, and the proper channels, and if the men will so work the sails as to carry her on, then I will undertake to bring her in." It has been stated more than once, that there was great insubordination amongst the crew, and that the pilot was conscious of that when he made this a part of the bargain. You, must deal with that as your own judgment may direct you, upon the evidence you have heard. Then he says, "We saw the pilot-boat go to the Bencoolen. One came to us. He was making signals all the way. He waved a flag. The meaning of that was, that we should bear down towards him. The captain saw the signal, but the Dryad did not alter her course before the pilot came on board. The pilot hailed and asked where we were going with the vessel. We were half a mile from the reef, going very little through the water—this was on the 23rd October. I left the Dryad when we got to Hayti, on the 22nd November, and I gave a reason to Captain Loose for my leaving. I went on board the Bencoolen, and was paid my wages all but 2*l.* by Captain Loose, which 2*l.* ought to have been paid at Liverpool," Then he says, "They ought to have followed the course marked red, and not that marked blue, which denotes the course which was actually pursued."

Then he is cross-examined by the learned counsel for the prisoner, and the beginning of the cross-examination was very much confined to a circumstance which took place last night, and which you had before your eyes and ears before the court closed. It seems this man had taken a quantity of liquor, which had rendered him incapable of conducting himself with decency, and he made a shouting and a noise, and was turned out of court. He was also examined as to circumstances that took place on a former

occasion, on his being put into a place of confinement for the same offence. The great object of the cross-examination, I suppose, was to show whether he was a fair witness, or whether he was fencing with questions the import of which he saw at the time were calculated to disgrace him. He concludes, however, by stating that though he does not allow he was what he calls drunk, still he had taken too much, which, indeed, it did not require his evidence to prove; and he also states upon the oath he has taken that whenever he is at sea, he does abstain entirely both from wine and spirits; and, therefore, as far as his evidence goes, if believed, the account he gave of what he witnessed at sea may be that of a person capable, if so inclined, of giving a true picture of what took place.

Then he says, "My belief would be that Captain Loose is alive from what I have been told. I have heard he is dead several times." Unless there is stronger ground for the assertion of his death than falls from this witness, it hardly authorises it to be taken *pro confesso* as a thing to be argued on and to be complained of (as a grievance) against the prosecution, that this Captain Loose is dead; because, certainly as far as there is evidence before us, probably you will be inclined to say and believe that he is alive and has gone somewhere else.

Then they call the next witness, Benjamin Schultz, whom I will at once introduce, as a person whose evidence you must look at with the greatest possible jealousy; for whatever excuse may be attempted to be given for it, who can found a just belief upon the testimony given by a person who is obliged to confess in the very course of giving his testimony, that on a former occasion he gave a different account, and that on his oath; for there was a piece of evidence which was very properly not kept back, but was allowed to be given by her Majesty's Attorney General, and it does appear, and he himself admits, that when he signed that protest, and pledged his oath to it, he stated in the course of it, that it was an accidental loss. That is the gist of the whole of it. That is the important part of that protest, and now he states, on oath, he believes that the loss was intended and designed by the master. The reason he gives for signing that protest is, that he could not have got his wages, due from the captain at the time, unless he had thought proper to sign it, and become a party to it. It does not seem that he succeeded in getting paid at last; for, according to his account, the captain never gave him his wages at all. This is a person as to whom I advise you to look

with great care and jealousy, to the testimony he gives, and to see how far he is confirmed by direct testimony in the case, or by other circumstances which lead you to believe that the account he gives you is true. Direct evidence, from a person who actually saw the casting away of the ship, you cannot look for, except in the evidence given by this witness; but testimony which may corroborate and confirm him, may be derived from what the prisoner at the bar, himself, has said in conversations, which are of course, to be taken as facts, upon which you are to found your judgment; in the course of commenting upon which, your attention will be called also, to that part of the documentary evidence, which relates to policies of insurance effected, and to bills of lading which have been signed, to see whether that has any operation and bearing in your mind, to induce you to come to the belief that unfair practices were had recourse to by the prisoner at the bar and by the captain.

Gentlemen, Schultz, however, comes and states, that in 1839 he was ship-carpenter on board the Dryad, and joined her on the 1st of September. He says, "I have recently come from the coast of Africa. I was at Liverpool when Captain Loose engaged me on board; we were very ill-found (he says) in provisions, and very poorly in tackle and spare spars—very poorly altogether. After sailing, the captain gave me orders to keep the long boat always in good order. The boat was kept half full of water, to keep it water tight. The effect of that would be, that she would be ready at any time for use." Then he says, "We were in the English Channel, and going at the time; we kept two tackles coiled in the boat. I remember the ship being in sight of Anagada, on a Thursday. At that time I was at the wheel. I saw the breakers, about four or five miles off, and called the mate. The mate ordered me to put the ship about, and then went to the captain. I did put her head about, and the captain came on deck. When I first observed the breakers, the ship was going right towards them. On my putting her about, the captain came and asked me who gave me orders to put the ship about? He took the wheel, hove her head up, and took her towards the breakers. I told him, I gave the orders myself; that I was not going to run the ship ashore in broad day-light. The crew came and enquired of him, what he had a mind to do. The captain did not keep the helm very long. I took the helm again. I put the helm down again, and the ship went round. She was very close to the rocks If she had gone on two minutes longer, she

must have gone fast on the rocks. I know the Silver Key. It was two days afterwards, on Saturday, that we were on the Silver Key. I had the helm at that time. When I saw the Silver Key, I hailed the mate—he saw the rock, and then went down to the captain—the captain came and looked, and said he could not see any breakers or rocks. They were plain enough to be seen. The captain had his eye-glass. I could see them with my naked eye. A man in the fore yard called out, "There is only four feet of water under her keel!" and that there was a rock. This was about four minutes after. The captain was on deck all the time. I was at the helm. About five minutes after the man had shouted out, the vessel struck. The captain called out, "What will we do, lads, we are lost!" The long boat was alongside the gang-way, and the jolly boat was a-top of her. The captain was on deck all the time. Nothing was done to get the boats out. The vessel struck four or five times. Two pintles were broken, and the rudder was unshipped. We hoisted the rudder on deck, and did what we could to make a jury rudder. Afterwards, the straps of the jury rudder broke. The captain had a life-preserver, and the crew told him they would tear it to pieces if he put it on. I remember the night before a gun being fired. He had kept out to sea that night. Before the gun was fired, I had seen a large ship to the northward. I saw the breakers about five miles off, when the gun was fired. We were steering right on them. The ship made signals to us, but our course was not altered when the gun was fired. There was a signal for a pilot on board the large ship. Before we kept out to sea, Davis and I were sent for, and the captain asked us what we had a mind to do, as we had no rudder? He said the best thing was to stand for the rocks. We told him the best thing was to keep her out to sea that night, and in the morning to try to make the harbour. We then shipped the rudder again, and stood out to sea. We did not alter our course on hearing the gun fired. We had no signal on board for a pilot. I understood from the gun and the signal on board the other ship, that we were in the wrong place; but the ship's course was not altered. The pilot boat came on board us from the large ship. The pilot boat bore down upon us—before they came near enough to speak, they waved a flag in the boat, and then hailed us, and asked where we were going to with the ship? The pilot afterwards came on board. The course was not altered till the pilot came to us. The breakers

were plain to be seen from the time of the gun firing till the pilot came. If the wind had changed, we should have been on the rock. The pilot altered our course, and we made the harbour. The wind was fair to keep us off the rock. We lay in the harbour from nine to ten days. Many complaints were made to the captain."

Now, Gentlemen, that is the account which he gives up to reaching Cape Hayti; and, as far as he has gone at present, his account does not materially differ from the account of Maxwell; indeed, they seem very much to run hand in hand together; but from that time, Maxwell left the ship and went on board the Bencoolen; and therefore, the remainder he speaks of for himself alone; and you must call your attention to how far you can credit the account he gives. He says, "The Dryad left Hayti on the 5th of November. She struck on the 10th November, off Cape Cruz. We struck on a small lump of rocks. We saw the reef as we came along the land all the day before. The captain himself was on deck all the night. The vessel was under his orders. Another man had the helm. It struck about half-past two. He was never on deck for the whole night before that night. He was on deck when she struck; one Simpson had the helm. The captain ordered me to let go the wheel, for I might be hurt. No orders were given to try to get her off. She did not at that time make a drop of water. I sounded the pumps every half-hour; or, rather, there was only one pump that could be sounded in the ship, for one had been stopped up with a bit of iron. I told the captain of it at Liverpool, but no alteration was made. The crew were willing to work, but no orders were given. The captain stayed on deck a little while, and then went down to the cabin. In my judgment, the ship might have been got off. The captain gave no orders. I would have worked her myself. If the anchors had been heaved out, and the sails down, I think she might have been got off; but, at ten o'clock, when a canoe came on board us, we were hard and fast. The captain asked the Spaniards in the canoe if there was not a town near? The Spaniards told him there was one thirty miles off, and that there was an English Consul there. The captain went in the canoe, and came on board; and afterwards took the boat and went on shore again. I and Simpson remained. There was a small boat on board. We made some sails for her, and tried them. We went round the ship to a small island, and close to the stern of the ship we saw a cigar-box, down at the bottom of

the sea, and an iron bolt lashed to it. We got it up. It was very close to the window of the master's cabin. The cigar-box had several letters in it, and some leaves of a log-book were in the box. The captain came back from the shore in the course of the afternoon, and the next day he had a conversation with myself and the crew. I left the ship the next day in the long boat, leaving the jolly boat on board, and went to Falmouth, in Jamaica. Simpson kept the letters. Captain Loose snapped them away from him at Jamaica, and gave him four one-pound notes to get them. I know nothing of the goods coming on board after I went on board. If any such goods as are mentioned did, it would have taken a day, or a day and a half to get them on board, and I must have known it. Neither I nor the rest of the crew went back to the vessel; nor the captain, as far as I know. He went from Falmouth to Montego Bay. I had told the captain, about mid-day the day before, that the vessel was sound; and the next day I found a hole cut through under her stem. The position in which the ship lay upon the rock would not account for it. I sounded her, and found there was five feet of water in the hold. After I found this hole, and the water in her, she could not have got off. I found this about four in the afternoon. The next day, about five in the evening, I found the hole in the inside part—inside the cabin. The captain saw it plain, and looked at it. From the time we were on the Silver Key, we always kept close to the shore among the rocks."

Then, Gentlemen, he is cross-examined, and in that cross-examination he admits that to which I called your attention before, that when he was at Jamaica he swore to the truth of the captain's protest, in which the loss of the ship is attributed to accident, and not to design.

Now, Gentlemen, I believe that, to be the principal part of that which is called direct evidence, and I now have to call your attention to the conversation that took place between Stott and the prisoner at the bar, which certainly you must bear in your mind, and submit to your consideration, when you give your verdict upon the present occasion. James Stott, a ship-broker, who was brought up with Selden and Johnson, says he left their employment in 1837. Some time afterwards he commenced on his own account, as a ship-broker, at 37, Seething-lane; he says, he became first acquainted with the prisoner when at Selden and Johnson's, that the prisoner was an ale and porter merchant, and im-

ported bristles and isinglass, and carried on business at 18, Cooper's-row, Tower-hill. He says, "He gave me an order to effect some insurances. In August, 1839, he gave me orders to do an insurance for him for 1264*l.* 12*s.* on goods by the Dryad, with the General Maritime Assurance Office. He gave me an account of the goods. This is the copy which was made from his instructions. He saw it at the time, and I was to show it to the officer of the General Maritime." Then there is documentary evidence to show that it was left at the office, and he says, "The policy was effected in consequence, and I handed it over to the prisoner. In January 1840, he instructed me to claim a loss on the policy. He brought me the bill of lading, and asked me if there was likely to be any objection made, that it was not stamped. I told him I thought they would not object, but he went and got it stamped—paying the penalty of 5*l.* I had never seen the bill of lading before; upon that occasion the insurance office paid at the rate of 80 per cent. 1012*l.* and afterwards they paid the remaining 253*l.*"

Gentlemen, upon this part of the transaction it will be very material to be satisfied whether the goods that were enumerated and specified in this policy were put on board or not, and whether, if they were not put on board, the prisoner at the bar was conscious at the time that they were not either put on board, or that they were not intended to be put on board; and the same observation applies to the subsequent policy for 600*l.* That enumerates a great variety of articles. There are cases of fruits and flannels to a considerable number, and cases of other articles, and there are also provisions in one of the policies, tierces of beef, barrels of pork, and firkins of butter. Now, if these articles had been put on board, one cannot but think that there was a very easy mode on the part of the prisoner of proving it. You observe, he contends that they were on board, and with respect to that letter which he directs Stott to write for him to the consul, he states that the only object he had for requesting, that what passed might be in confidence, was, that it was an irregular transaction, his putting the goods on board at all, their object being to avoid paying freight and duty. That, however, would have nothing to do with the charge under which he is now being tried, but it implies and assumes that the goods were actually put on board, and if these different articles were, in point of fact, purchased

and put on board the ship, it would have been most material to the prisoner to have proved it; and it is impossible to suppose that, if such were the fact, they could not have been proved to have come to the hands either of the brother Michael or of Patrick. Therefore, when you are considering whether they were on board or not, that is not a circumstance altogether to be omitted. Then, Gentlemen, we have had some little more evidence to show that the ship was not fully laden, and that about a third part of her was left unladen, without the cargo being filled up; and the witnesses state, that it is impossible that such articles as these—such as 88 crates of earthenware, and these other things, could have been put on board. They say that it would take a day, or a day and a half, to put them on board, and that they could not have been so put on board without its coming to the knowledge of the officers and crew at the time. Indeed Captain Tait says, he looked into the hold, and that she did not appear to him to be above two-thirds full.

Then, Gentlemen, this witness Stott goes on to say—"When I took the protest which was necessary for the purpose of getting the 20 per cent. which remained unpaid, the prisoner told me not to leave it longer than two days—that he had got it by favour, and had promised to return it in that time. The office at first refused to pay the 80 per cent. I told the prisoner that the gentlemen at the office said they never saw such a protest in their lives—that they wanted a captain's letter. He said they had no business with it—that he had not got it, and should not show it to them. I told him he had better get it, and he said he would endeavour to do so. The next day he brought the letter, and said it had cost him two sovereigns. I enquired how—he replied that he had given two sovereigns to the clerk of Howden and Ainslie to get him the letter unknown to Howden and Ainslie, in order that they should not be aware of the fact, so as to mention it to his brother, as he did not wish him to know that he was settling his insurance." Then the witness goes on to say, as to the other policy—"I recollect asking the prisoner afterwards whether he had received any further account of the wreck. He said his brother had. I said that is all right. I asked him for it to take to the General Maritime Insurance. He said he wished they might get it; for he did not intend to give it them. They had had the protest and the policy, and that was all they could have by law;

and he said if they did not settle before the twelve months he would make them; and I said it was better to settle amicably if he could. I asked him the particulars of the letter. He said there were some pans that were saved, but no beef or pork. He laughed when he said that. I asked him what he laughed at, he said, 'Loose has done the job very well.' I asked him what job? He laughed again, and said I was not half awake. He requested me to write a letter to the consul, and this is a copy of it. The substance of it is to require further information, and stating the fact that the goods had been put on board. I asked the prisoner the reason for writing the postscript, which is, "Of course this communication is in confidence between ourselves." I asked him the reason for writing the postscript. He said, "Do as I direct you, or else leave it alone." He said the reason was that the merchants not having filled up the ship according to the charter-party, they had filled her up themselves. He said they did not wish them to know they had shipped goods in the ship, otherwise they would charge freight. Also he did not wish Captain Loose to hear they were making any enquiries; and, in a conversation with the prisoner afterwards, he said, 'Neither Loose nor papers would come again.' The answer of the consul came to me, and I showed it to him." Then he says "The observation about Captain Loose, was his remark on my shewing him the letter. I asked him the reason for saying so; and he said Loose was a great rogue—he picked up all he could from the wreck, and was since gone to the States. He made that observation jokingly. Some time after that—about a month after —I was asking him whether he had any further intelligence from Captain Loose? He said he believed he was dead." This, Gentlemen, is the only other part of the evidence that relates to his death: "That he died on board the Premier coming home. I asked him if he had received the papers. That I supposed they would be amongst the captain's effects. He said the trunks had been opened, but that there were no papers. I asked him again if he had learned what was the cause of his death. He replied, he believed he was not dead, for that he had been in London three weeks. I said, if he was in London, why not go to the General Maritime and obtain a settlement, that I thought his word ought to be taken for it. He replied, he wished they may get him there; but he was sure he would not go—he had not even gone to settle his own insurance on his chronometer. I recollect going to the prisoner in Crosby Hall, where he had cham-

bers, about three weeks afterwards. He said Captain Loose was not in London. He said 'I wish he was—I would give him a ship directly, for he was a very clever fellow, and deserved all he got.' He said he had 'done the Dryad's job very clean.' These were his words, according to the best of my recollection. I said, he must have been well paid if he had done so. He said —'Oh, a thousand or two.' He said this laughingly. I remember the Prisoner being taken into custody. I saw him at the Mansion House. I asked him the meaning of it. He said it was the Dryad. I said, 'Then my suspicions all along have been correct.' He said, I need not fear—I was only an agent; but that he was afraid he should be transported. I said, 'Why should you fear that—you were not master of the ship?' He said, 'Oh, the goods were never on board, and there are papers in my house to prove me guilty.' This conversation took place about five minutes before we went before the Lord Mayor—going back in the coach he told the officer we ought to go after his brother, for that he was the rogue—that all he had done was for him; and I believe what he said was true; and that he never would have been in the situation that he is if it had not been for him." Then he says that before that time he had no suspicion that he was not a just and honest man.

Gentlemen, there is other evidence given of conversations, to which it is important that I should direct your attention; because it is in favour of the prisoner at the bar. That is the evidence of Frost and the evidence of Roe, who speak to conversations which they had with the prisoner on his being taken into custody, and challenged with the offence. They both say that he declared himself an innocent man, and that his brother was the person who ought to have been taken into custody.

Gentlemen, the remaining evidence is that of Mr. Kelly, the shipping clerk of Zulueta and Co.; and it goes merely to this, that he was on board every day till all Zulueta's goods were safely put into the hold; and that by the time they had been put in, a third of the vessel was left unfilled; and, according to his belief, that remained the state and condition of the vessel till she sailed.

Now, Gentlemen, I will offer one or two observations upon the effect of those two policies that were effected in the name of the prisoner at the bar, and upon the effect of a bill of lading being signed by the captain, specifying certain goods when there were, in point of fact, no such goods on board. One can hardly

suppose that, with an honest, and fair, and straightforward intention, the captain of a vessel would sign a bill of lading, specifying goods upon the back of it, which goods he had never received. Every one knows that the signature of the captain makes him liable to an action upon that bill of lading, if the goods never arrive at their destination. Why then, if he was conscious that he had never received them, should he put his name to a bill of lading binding himself safely to deliver them? The value of that observation depends, of course, on your first satisfying yourselves that the goods were not on board. And, again, Gentlemen, with respect to an insurance on goods, nobody would insure goods which are not on board a vessel with a fair and honest intention, for if the ship arrives safely at her destination, he never could claim on that policy for those goods that ought to have been on board. He never could be the better for having insured; but, on the contrary, he would lose the charges of insurance and the premiums paid. When a man effects a policy to any considerable extent on goods not put on board, you must yourself look about and see what could have been the object or motive of the party in so conducting himself. There is evidence in this case, that out of the proceeds of the policies of insurance, 3543*l.*, that had been paid by the Neptune office, came to the hands of Michael Wallace. That is traced out in a manner that can leave no doubt in your minds. And there is evidence that a sum of 1731*l.* 9*s.* 6*d.* came into the possession of the prisoner at the bar, out of which, part was returned to Michael; and a sum of 1100*l.* was purchased by his order into the funds, in the name of Catherine Wallace. The ground of defence, which is principally to be considered by you, is, whether you are satisfied that the prisoner at the bar was aware at the time that these goods were not put on board. You are desired to consider, and it is a just way to consider the case, that the prisoner being in London, might give that full credit to his brother, who was at Liverpool at the time, that he might believe that the brother intended to ship these goods on board. You must see the degree of confidence existing between them at the time, and how far that supposition, which is in favor of the prisoner, is reconcileable with the conversation which falls from himself, when Stott visits him, and when he is taken into custody. Persons do not in general put a construction on their own acts, which are unfavourable to themselves. If, therefore, it is given to you in evidence, correctly, that which comes from a person in

the condition of the prisoner, if it makes against him, is most important.

The Attorney General. Your Lordship would wish to state to the jury the evidence as to the handwriting of the body of the the bills of lading.

Lord Chief Justice Tindal. The handwriting in the body of the bills of lading, is that of the prisoner..

Mr. Doane. I do not think your Lordship has yet read, from your notes, that part of the cross-examination of Stott, which refers to the insinuation of the wilful loss of the Dryad.

Lord Chief Justice Tindal. I should be very sorry that anything should be omitted. The bills of lading, Gentlemen, are in the handwriting of the prisoner, and are signed by Captain Loose. With respect to the cross-examination of Stott—

Mr. Doane. It is merely that part of his cross-examination in which he states that the prisoner threatened to kick him out of the room.

Lord Chief Justice Tindal. He says,—"It was about a month before he was taken up, that the conversation took place about his not wishing Zulueta and Co. to know that he had put these goods on board." "There were persons present, when I conversed with him—there was Mr. Phillips, junior, the solicitor—he was close by, he almost touched me—he interrupted me, and told me I was not to speak. All his conversations were jocular —I did not think much of them. I asked him on one occasion, whether the Dryad was one of the ships sent out to be lost. He became very indignant, and threatened to kick me out of the room. I missed the prisoner in the course of this transaction, and he told me he was going to St. Petersburgh. He told me he was going on business. I thought there were many things in this business that were very curious; but I had too good an opinion of him to think there was any fraud. I heard that his sisters were taken up." If there is anything more that I have omitted, on either side, I shall be happy to add it.

The Attorney General. I think the whole case is fully before the jury, my Lord.

Lord Chief Justice Tindal. This is the case, Gentlemen, and as I set out with telling you, you must be satisfied in the affirmative, by evidence upon which you can rely, that the captain, with the wicked intention of defrauding some one of the persons mentioned in this indictment, that is, some one of those who had underwritten these policies, or the part owners of the vessel, did

wilfully cast away this ship; and you must be further satisfied that prior to this taking place, there was some concert and scheme going on in London, in which the prisoner was a party concerned; so that by his aid, or procurement, or incitement, this scheme, very wicked if it actually took place, was carried into effect. If, upon the whole of the evidence, you entertain any fair and reasonable ground of doubt, that either of these points is satisfactorily established, it will be your duty to acquit the prisoner; but, if you are satisfied that those points are made out, it will be your duty, however painful, to find him guilty. It is a mere question of fact, and you will take it into your own hands. I need hardly say anything about character, for the evidence upon that subject came out more strongly from the witnesses for the prosecution.

The Foreman of the Jury. My Lord, we wish to retire for a few minutes, with your Lordship's permission.

Lord Chief Justice Tindal. By all means, Gentlemen, if you desire it.

A Juror. May we have the documents with us, my Lord?

Lord Chief Justice Tindal. You are at liberty to have those papers which have been given in evidence.

Mr. Jervis. And the protest, my Lord.

Lord Chief Justice Tindal You shall have whatever is in evidence, Gentlemen—what do you wish to have?

A Juror. The policies, my Lord.

Another Juror. I do not see any occasion for it.

A Juror. I think the notes I have may be sufficient.

Lord Chief Justice Tindal. Without the policy?

A Juror. Yes, my Lord.

Lord Chief Justice Tindal. If you find you want any of the documents, you have only to ask the officer for them, and they shall be sent to you.

The jury retired to consider the verdict at five minutes to seven.

At five minutes past eight the jury sent for some of the documents given in evidence, which were taken to them by an officer of the court.

At twenty-five minutes past eight the jury returned into court, finding the prisoner *Guilty*.

AT THE CENTRAL CRIMINAL COURT,

March 5th, 1841.

THE QUEEN *v.* WALLACE.

PROCEEDINGS ON THE TRIAL OF THE INDICTMENT AGAINST MICHAEL SHAW STEWART WALLACE.

The following Jury were sworn.

Adolphus Canner.	Richard Swain.
William Thomas.	Edward Corderoy.
William Topliff.	Charles Tuckett.
Peter Johnson.	William Wells.
Henry Wormald.	Thomas Rivinson.
Edward Glenney.	John Sainsbury.

The Attorney General. May it please your Lordship,—Gentlemen of the Jury,—the prisoner at the bar, Michael Wallace, stands indicted, as you have heard, for counselling and procuring one Edmund Loose, wilfully to cast away a ship with intent to defraud the underwriters.

Gentlemen, I am happy to inform you that this is no longer a capital offence. It does not affect the life of the prisoner; but still it is one of a very grave nature, and is now punishable by transportation or imprisonment, at the pleasure of the Court, before whom the offender is convicted. The law upon the subject is regulated by an Act of Parliament passed in the commencement of the present reign, by which the doing of this act, or counselling to do it, is made a transportable felony.

Gentlemen, I will now state to you, with great brevity I hope, the circumstances of this case as they will be laid in evidence before you, merely with a view of your apprehending the evidence when it is so produced.

Gentlemen, the ship in question, was the Dryad. She was the property of Michael Wallace, the prisoner at the bar, and Howden and Ainslie. The prisoner was the owner of three-

fourths of that vessel, and Howden and Ainslie of the remaining fourth. On the 25th of July, 1839, she was chartered by the house of Zulueta and Co. (who had an establishment at Liverpool and another in London) to the West Indies. She was then lying in the port of Liverpool; by the terms of that charter-party, the whole of the stowage of the ship was freighted by Zulueta and Co. for a lump freight of 300*l.*; the cargo to be carried from Liverpool to Santa Cruz, in the island of Cuba; and it will be material that you should bear in mind, that, for this sum of 300*l.*, Zulueta and Co. were to have the whole of the stowage of the ship; and all the freight that might be earned was for their benefit.

Gentlemen, that ship being at Liverpool and bound upon this voyage; it will appear, I think, clearly and satisfactorily before you, that the prisoner at the bar, along with his brother Patrick Wallace, and the captain of the ship, Captain Loose, entered into a most fraudulent scheme of effecting insurances upon goods that were not on board, and of effecting insurances to a much greater amount than the value of the ship and the freight, and afterwards of casting away the ship, so that there might be a demand upon the underwriters for the loss of property that did not exist.

Gentlemen, the ship lying at Liverpool was loaded by Zulueta and Co.; they put on board goods to the amount of 3000*l.* upon which they effected an honest insurance to that amount to cover the risk. There were no other goods on board except those that were thus shipped by Zulueta and Co. They put up the ship as a general ship. They advertized her at Liverpool. They were in hopes, down to the time when she sailed, which was on the 7th of September, that they might have a full cargo. They did not obtain a full cargo. No goods offered, and no goods were shipped except the goods belonging to that house by whom the ship was freighted.

Now, Gentlemen, I proceed to state the insurances that were effected upon the ship by Patrick Wallace and by Michael Wallace; and when I have stated what these insurances were, coupled with the fact of the value of the ship, and that there were no goods on board it, I apprehend I shall lay a complete foundation for my case by showing a most fraudulent scheme.

Gentlemen, the parties who had the management of the Dryad, were Messrs. Howden and Ainslie. They effected two policies upon the ship and freight, which were perfectly legiti-

mate; one for 2000*l.* upon the ship, and another of 300*l.* upon the freight. Gentlemen, I should tell you that the ship was of the value of 2000*l.* and no more. That would have been the fair sum for her to be sold at in the market, and if she had been lost, a sum of 2000*l.* would have enabled the owners to buy a ship of equal capacity and value.

Gentlemen, those two insurances of the 2000*l.* on the ship, and 300*l.* on the freight, were perfectly fair and honest. These were effected by Howden and Ainslie, at the request of Patrick, and Howden and Ainslie, the owners of a fourth, knew of no other policy being effected upon the ship.

But, Gentlemen, I now proceed to mention to you a policy that was effected upon goods that were never loaded. The first that I shall mention, is the policy which was effected on the 24th of August. Now, it will be material for you to bear in mind, that at that time the ship was lying at Liverpool. At that time, I believe, the loading had not begun. At that time it was expected that Zulueta and Co. would have a complete cargo, whereby to fill up the ship and to send her to Santa Cruz.

Gentlemen, that policy of the 24th August, 1839, was effected by a broker of the name of Stott, at the request of Patrick; and it will be material that you should bear in mind that this and two other fraudulent policies, actually, upon the face of the policies, specify the goods that were supposed to be loaded and were supposed to be covered by the insurance. This policy of the 24th August, upon the face of it, professes to be upon six cases of flannels—upon a certain quantity of cloth—and a certain number of cases of printed cottons, value 750*l.*

Gentlemen, there will be afterwards produced a bill of lading, signed by Captain Loose, whereby it was professed that the goods had been put on board the Dryad, and that they were to be delivered in the like manner and condition in which they were received, at Santa Cruz, in the island of Cuba. Gentlemen, that bill of lading I hold in my hand, it is dated 20th of August, 1839, and it contains an enumeration of the goods specified upon the face of the policy.

Gentlemen, the next policy that I have to mention is one that was effected on the 7th August, before the loading of the ship began,—before she had been entered out at Liverpool to take in her cargo, which was not until the 15th August. Gentlemen, that policy likewise specifies upon the face of it the goods that were to be insured. It is upon thirty-nine tierces of beef, fifty-

two barrels of pork, thirty-eight firkins of butter, thirty-five crates of earthenware, seven cases of fifty pieces of cotton prints, and five bales of blankets, value 1264*l.* 12*s.*

Gentlemen, that policy was effected by the order of Patrick Wallace, through the instrumentality of Mr. Stott, the broker, bearing date the 7th of August.

Gentlemen, there is a bill of lading, whereby Captain Loose professes to acknowledge that he had received the same quantity of goods on board. The date of that, it is most material for you to bear in mind. It is the 15th day of August, 1839; and by this bill of lading, so dated and signed by Captain Loose, he professes that there was shipped in good order and condition, by P. M. S. Wallace, in the ship or vessel called the "Dryad," now lying in the port of Liverpool, thirty-nine tierces of beef, and the rest of the goods, answering exactly to the specification of goods upon the face of the policy. Gentlemen, no such goods were then shipped, for at that time the entry of the ship for taking in her cargo had not begun. No such goods were ever shipped. No goods were shipped, as I told you, at Liverpool, except those belonging to Zulueta and Co.

Gentlemen, there was a third policy on goods, which was effected for 687*l.*, by Lyndall and Hall, the brokers. That policy is dated 22d August, 1839, and it likewise specifies upon the face of the policy the goods that were intended to be shipped. Thirty tierces of beef, forty-three barrels of pork, thirty-five firkins of butter, and fifty crates of earthenware. Gentlemen, there was a bill of lading, signed by Captain Loose, by which he professed to have taken those goods on board. That bill of lading is dated 20th of August, 1839. It contains goods precisely corresponding with the goods that are specified upon the face of the policy, and that are covered by the insurance. Those goods never were received on board the ship.

Gentlemen, the other policies that were effected, were upon the ship and outfit. Now, I told you that there were two policies, which I consider as legitimate for 2300*l.* upon the ship and freight. In addition to these there were effected, by Michael, the prisoner at the bar, one policy for 700*l.*, upon the ship and outfit, Selden and Johnson being the brokers, which was effected with the Neptune Insurance office; and Michael Wallace likewise effected another policy through Selden and Johnson, with the same insurance office, for 700*l.*, upon the chartered freight. There was another policy on freight to the amount of 600*l.*,

which was effected with the Mutual Indemnity Office. There was another policy effected at Liverpool by the orders of Michael, to the amount of 500*l.*, upon the ship. Now, Gentlemen, these last policies that I have mentioned to you,—the 700*l.*, the 700*l.*, the 600*l.*, and the 500*l.*, were fraudulent insurances, because, with the knowledge of Michael, Howden and Ainslie had before that effected two insurances to cover the amount of the property that was at risk. The insurances, therefore, stand thus, Gentlemen. There were insured upon goods that never were loaded 2666*l.*; there was the 715*l.* policy on goods, the 1264*l.* 12*s.* policy on goods, and the 687*l.* policy on goods, making 2666*l.* There were fraudulent policies upon ship and freight, to the amount of 2500*l.*; there was the 700*l.* policy, the 700*l.* policy; —these two were the Neptune;—the 600*l.* with the Indemnity, and the 500*l.* effected at Liverpool, making 2500*l.*

Now, Gentlemen, I will state to you the clear evidence that we have that the goods I have mentioned to you, never were on board. I shall show the value of the ship to have been only 2000*l.* Then with regard to the goods I shall prove in the clearest manner, that those goods, so insured by these three policies, never were loaded; and, indeed, Gentlemen, the thing speaks for itself, because, just observe—On the 15th of August, when one of these bills bears date, and on the 20th of August when the other bears date, and when it is pretended these goods were received on board the Dryad, at Liverpool, the Dryad had not begun to load her cargo, and she was under the superintendence of Zulueta and Co., who were to fill her with their own goods, and with such goods as they could procure from other shippers, so as to make as good a freight for their benefit as they could accomplish.

Gentlemen, I shall show by the clerk of Zulueta and Co., that, as far as he knows, there were no other goods on board. I shall show, Gentlemen, by the mate of the ship, who joined her, I think, on the 4th of September, that there were no other goods on board except those of Zulueta and Co., and that he is certain, that no such goods as are mentioned in these bills of lading ever were loaded. The ship was only two-thirds full; and then, Gentlemen, I shall show by the declaration of Captain Loose, himself, that he had the goods of Zulueta and Co., and that no others were entered at Liverpool.

Gentlemen, a surmise may be made—I know not whether my learned friend may resort to it—that Zulueta and Co., not being

able to load the ship, when the 5th or 6th of September came round, there was still a quantity of stowage unoccupied in the ship—that Michael Wallace, who happened to be present, without the knowledge of Zulueta and Co., and intending that those goods should be carried to Santa Cruz, without paying freight—that he, unknown to Zulueta and Co., got these goods put on board without any declaration at the Custom House—Zulueta and Co., being kept in entire ignorance of the transaction. If such an attempt is made it must utterly fail; for, I have only to draw your attention to this, that the bills of lading are dated 15th and 20th August preceding; and at that time the scheme had been hatched, and was in the course of being carried into effect, whereby those fraudulent insurances had been directed to be effected, and actually had been effected, at the time when it was thought that Zulueta and Co., most probably, would be able to fill up the whole of the stowage of the vessel.

Now, Gentlemen, under these circumstances, this foundation of fraud being laid, it is quite clear that the intention must have been to lose the vessel. Really, Gentlemen, I cannot disguise it, because for what other purpose could these excessive insurances of above 2000*l.* on the ship, and fraudulent insurances to the amount of 2666*l.* on goods never loaded nor intended to be loaded? For what purpose could these policies have been effected, with the knowledge of Captain Loose? Captain Loose signed these bills of lading, whereby he acknowledges that he will make himself liable for goods that never were in his custody. He might be sued if it were an honest transaction, upon those bills of lading, therefore he, Gentlemen, must have been a party to this conspiracy. And what was the object of the parties concerned? Gentlemen, it could be none other, except to cast away the vessel, with the intention of coming upon those underwriters who had subscribed the policies; otherwise a large sum—I do not know what would be the exact amount of the premium, or whether it has been calculated—but a very considerable sum would be actually thrown away, and a fraud would be attempted without any possible object. Gentlemen, such suspicions as you might entertain upon such policies being effected, you will find are by no means unfounded; because, when the vessel did sail there can be no doubt, that there were various attempts made, on the part of Captain Loose, to cast away the ship, and at last he accomplished his object about fifteen miles from his port of destination.

Gentlemen, the ship sailed on the 7th September, being then only two-thirds full, and having then on board the goods of Zulueta and Co., and none other. There were circumstances of suspicion that arose that will be detailed to you by the witnesses; but I will merely draw your attention to what took place after the ship had arrived at a place called Anagada, I believe, one of the Virgin Islands. There it will appear clearly that an attempt was made by Captain Loose to cast away the ship, but he was defeated in that attempt.

Gentlemen, another attempt was made by him when he got upon a place called the "Silver Bank," or the "Silver Key," at no great distance from the island of St. Domingo, and he was again disappointed in his object.

He then crept along the north coast of the island of Hayti or St. Domingo, till he came to a port called Port Haytian or Port Hayti. There you will find that another attempt was made to run her on a reef; and again the captain was disappointed. The ship was brought into port. From her being run upon the Silver Bank her rudder had been unshipped. A jury rudder had been rigged, and she was brought into Port Haytian, where she was repaired, and then she sailed I think on the 5th November. She sailed then for Santa Cruz.

Gentlemen, the captain, instead of making Santa Cruz in the proper course, whereby he would have avoided the shoals and breakers that there are to the north of that port, made the coast. He crept along the coast. He got amongst shoals and breakers, and at last, on the 10th or the 11th November, he did run her upon a reef, and there she was finally lost. I believe even then she might have been got off, but instead of making the efforts that were proper for that purpose, you will find that a different line of conduct was pursued, and that that was done which rendered it impossible that she should be got off, and there she was finally lost. The captain and the crew came to Falmouth, in the island of Jamaica, and from thence the crew returned to London. What has become of Captain Loose we know not. Some reports state that he is dead—some that he is alive—others that he is gone to the United States—and others that he came to London; but he is not on his trial, though it is necessary that we should establish that he actually did the act to which the prisoner is charged to have been an accessory.

Now, Gentlemen, that we shall do, I think I may say, in a clear and satisfactory manner; because, Captain Loose was a

party to the fraud—he signed these bills of lading of goods which he never had received. He sails with the object of casting away the vessel. Then, Gentlemen, we shall prove, by three witnesses who will be called before you, the attempts that he made, and the manner in which his object was at last effected. One of those witnesses, Gentlemen, is Mr. Ronald Maxwell, who was the first mate of the Dryad—who sailed with her from Liverpool—who was instrumental in defeating the attempts that were made at Anagada, and at the Silver Bank, to throw away the vessel, and who left her when she got into Port Hayti. Gentlemen, the second witness is Captain Tait, of the Bencoolen, a merchantman. He was with his ship at Port Hayti at the time that the Dryad arrived there. He saw the attempt. He was not aware that it was an attempt to throw away the ship. He thought that Captain Loose was acting in ignorance—that he did not know the danger to which he was exposed. He made a signal by firing a gun, to warn Captain Loose of his danger; but Captain Loose still allowed the ship to drift towards the reef, and was altogether reckless of the attempts made by others to warn him of the danger to which he was exposed; and it was not until a pilot came from the Bencoolen to the Dryad, and actually got possession of the ship, that she was put about from the course she was taking towards the reef, and was brought safely into port. Gentlemen, that Captain Tait—a witness above all suspicion, and all exception—will detail to you circumstances that took place when the Dryad was entering Hayti; and will, I think, leave no doubt upon your minds that upon that occasion an attempt was made to destroy her.

Gentlemen, the third witness is a witness of the name of Schultz, one of the seamen shipped at Liverpool, and who remained on board until the final destruction of the Dryad. Gentlemen, he will give you the same account of the voyage from Liverpool to Hayti that is given by Maxwell the mate; then he will detail the circumstances that took place from the time the ship sailed from Hayti until her final destruction, about fifteen miles from Santa Cruz. Gentlemen, I have no hesitation in mentioning to you a circumstance which will make you investigate with suspicion the testimony to be given by that witness; and, if he were to state facts that were improbable—if he were to state facts not corroborated by strong concurring testimony—by testimony of facts and circumstances which cannot deceive—it would be difficult to say that entire reliance should be placed

upon his evidence, for this reason, that, after the loss of the ship, the captain and the men went to Jamaica; and the captain, as part of the scheme that he had in view, made a protest, by which he ascribed the loss of the vessel to accidental circumstances. Now, without such a protest, the scheme that they had undertaken must ultimately have failed; because, you are aware that underwriters never will pay without a protest; and there must be a protest, signed not only by the master, but by some of the crew of the ship. Gentlemen, when Captain Loose got to Falmouth, in Jamaica, with the view of making a protest, that it should be sent home to England, upon which all these fraudulent insurances should be required to be paid, he made a protest, and he induced Schultz, the person to whom I am now referring, to swear that, in substance, that protest was true. Schultz says that at that time he was destitute in the island of Jamaica, and that it was with a view to get payment of his wages that he was induced to do that which cannot be justified; and that, as soon as he had done it, the captain of the ship, finding that he had gained his object, and had got this protest, and that he might set Schultz at defiance, even refused to pay him the wages due to him, and which he had promised to pay. Now, Gentlemen, I do not at all dispute that this throws a certain degree of suspicion upon the evidence that Schultz gives; but, Gentlemen, if a jury were to lay down this, as a rule, that when the captain of a ship, who has wilfully thrown her away, can induce the crew, or any part of the crew, to join in a protest, he may set the law at defiance and is sure to escape with impunity—that no credit whatever can be given by a jury to a seaman who has signed such a protest—only see what lamentable consequences would ensue. It would be proclaiming impunity to crime; for captains of ships, by various devices, would then induce the men to sign protests, and if those men, who have signed these protests, must be discredited when they come before a regular tribunal of this country, to give evidence respecting the circumstances of the voyage, then, Gentlemen, I am afraid, that offences of this sort would multiply exceedingly; for there would be hardly any means of bringing the offender to justice. I think when you see how Schultz is corroborated as to the former attempts to cast away the ship, standing on the testimony of Maxwell, the mate, and the master of the Bencoolen—when you find the captain engaged in this fraudulent enterprise—when you are aware that he could not reach his destination, Santa Cruz, without entirely

defeating the object he had in view, I think, that though looking on the testimony of Schultz with some suspicion, you will, on the whole, have no difficulty in giving credit to the testimony he gives.

Then what remains, Gentlemen? A very important question. What share had Michael Wallace in this enterprise? Now, Gentlemen, upon that subject, if you believe that the ship was wilfully cast away, I must say, I know not how you can doubt that Michael Wallace, the prisoner at the bar, was privy to that crime. He was the owner of three-fourths of the vessel. He effected these fraudulent insurances. Gentlemen, it might be said with regard to Patrick Wallace, that he was not the owner of the ship—that he had nothing to do with fitting her out—that he remained in London—that he might be the dupe of others—that he might be deceived, and that he might have supposed the goods were on board. But, Gentlemen, it will appear that Michael was at Liverpool—that he was on board the ship, I believe, again and again—that he superintended the fitting of her out—that he was in company with Loose—that he must have perfectly well known that the goods were not on board—that he must have been perfectly well aware that there could be no object in effecting these fraudulent insurances, except for the purpose of wilfully casting her away; but, Gentlemen, I shall further prove that when news of the loss of this ship did arrive, claims were made upon those fraudulent insurances; that a total loss was obtained from the Neptune—from the Mutual Indemnity—and from the Liverpool underwriters; and that money was received by Michael Wallace, the prisoner at the bar. I shall further prove that he participated in the proceeds of the fraudulent insurances on the goods. The policy, I think, for 687*l.* was in their joint names. The bill of lading, with regard to the goods in this policy, is in the joint names of Messrs. M. and P. Wallace—Michael and Patrick Wallace. Gentlemen, I shall show that part of the proceeds of the fraudulent insurances upon the goods that never were shipped, were actually received by Michael Wallace, and that he put into his own pocket the proceeds of these fraudulent insurances. Well, but if that be so, Gentlemen, it may be said that although he *were* guilty of a fraud in receiving the money, that does not show, necessarily, that he was aware before the ship sailed of the intention of casting her away; because, I must acknowledge, that a mere subsequent adoption of the fraud, although it would show him to be a very dishonest person,

would not prove him guilty of the crime here laid to his charge.

But when you find him effecting those policies to the amount of above 2000*l.* on ship and freight, that had been covered before—when you find him at Liverpool superintending the loading of the ship—and when you find afterwards, in the beginning of the year 1840, that he not only received the proceeds of these fraudulent policies upon the ship and freight, but that he received part of the proceeds upon the fraudulent insurances on goods that never were shipped, I am afraid that there is no degree of Christian charity that could at all justify any doubt on the mind of a reasonable person of his having a guilty knowledge of the enterprise at the time it was conceived; and that you will have no doubt that he was one of those who engaged in that enterprise—that he planned it—and that he well knew, when the ship sailed from Liverpool, that she was to be wilfully cast away, and never was to be allowed to reach her port of destination.

Gentlemen, under these circumstances, I am afraid you will have very little difficulty in coming to the conclusion that the charge is fully made out against the prisoner.

There is another circumstance, Gentlemen, by no means to be overlooked. It was on the 27th of November, that this charge was brought against his brother Patrick. He well knew that he was supposed to be implicated in it. He lived, I think, in Tredegar-square. An attempt was made to discover him and to take him into custody. He could not be found at his place of residence, nor any where in London; but on the 17th day of December, he was found at a little village on the sea-shore in the county of Lancaster. It has been said, that he had gone there for the purpose of sea-bathing; I know not whether such a suggestion will now be brought forward. It is hardly probable that in the month of December he should have left London for that purpose, knowing that this charge had been brought against him and his brother, and it is hardly possible that he could have been ignorant that the officers of justice were in pursuit of him.

Now, Gentlemen, you will hear my friend, Mr. Jervis, who will do all that can be done for his client—by zeal, by learning, and eloquence; and I am very glad that he will have the opportunity of addressing you. And upon this subject, Gentlemen, I beg permission, before I conclude, to give an expla-

nation of what was said in this court yesterday. It was said that I had declared that the Prisoners' Counsel Bill was a curse to the country. I never said so nor anything at all that, if the whole had been understood, could bear such a meaning. What I said was this. It was in the case of an indictment against a person named Williams, for forging a Will. That was a case as to a disputed Will. It ought to have been tried in an action of ejectment. If it had been, I said—I, defending the plaintiff, should have had an opportunity of beginning to address the Jury and should have had the last word in reply. But to avoid that, and to preveut those who supported the Will having that advantage, they tried it in the form of an indictment for felony, whereby the prosecutor's counsel began, and the prosecutor's counsel had the reply. With reference to that, I said, Gentlemen, that if such a proceeding were to be sanctioned, and such an abuse were to be made of that most excellent law, then it would become a curse to the country. But, I humbly assisted in passing that Bill through Parliament—I always approved of it, and I am happy to think that all the Judges of the land are of opinion that it operates most beneficially in the administration of justice.

You will hear all that my friend can urge in favor of his client, but you will look at the facts here, and see what explanation he gives of these bills of lading, and what he says about the goods being on board. If, however, what he says does not excite a reasonable doubt, in your minds, then it will be your duty, however painful, to find a verdict of guilty.

Mr. Jervis. With your Lordship's permission, I will just state the objection I have to this proceeding. I believe my friend does not object to my doing it now?

Lord Chief Justice Tindal. What is it?

Mr. Jervis. My Lord, my objection is with respect to the jurisdiction of this court, sitting under the Central Criminal Court Act, for the trial of this party. I will merely state the objection now, for it may be said that this is not the proper time to take it. In Codling's case (the King v. Easterby) the objection was taken at the end, and could only be taken when the facts were clearly before the court. Now, in this case, as was stated by my friend, correctly, on a former occasion, the principal offence is upon the 6th section of 1st Victoria, cap. 89. By the 11th section, accessories are made guilty of felony, and are made

subject to all the same incidents as the principal offender, and by the 14th section, offences within the jurisdiction of the Admiralty, may be tried in the same way as they were before the passing of the Act—that is with reference to theCentral Criminal Court Act.

Lord Chief Justice Tindal. The 14th section ?

Mr. Jervis. Yes, my Lord; the clause added has been added in all recent bills, that offences on the high seas, shall be tryable in the same manner as offences were formerly tryable, within the jurisdiction of the Admiralty,—that is by commission. Then the 7th Geo. IV. cap. 64, sec. 9, is the clause which is applicable to the trial of accessories; and without reference to the previous part, as to the form of the indictment, it goes on to state—"And the offence of the person counselling, procuring, or commanding (howsoever indicted) may be inquired of, tried, determined, and punished, by any court which shall have jurisdiction to try the principal felon." Those are important words. The jurisdiction, therefore, which is conferred upon the court for the trial of accessories, is referable to, and follows the jurisdiction which attaches upon the person of the principal felon, and not to the offence.

Lord Chief Justice Tindal. That is section 9, is it ?

Mr. Jervis. Yes, my Lord, it "may be enquired of, tried and determined by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony." That is to say, any court which has jurisdiction to try the principal felon. That is, they may try an accessory in the same manner as if the offence of the felony had been committed at that place. And that section is important, as drawing a distinction between the principal felony and the principal felon, the trial of which, or the jurisdiction over whom, is to give jurisdiction to try the accessory.

Now, my Lord, let us see what the Central Criminal Court Act says, which has put this court upon the same footing as the old court. It is 4 and 5 William IV., cap. 36, sec. 22. "Whereas it is expedient that persons charged with certain offences committed on the high seas, and other places within the jurisdiction of the Admiralty of England, should speedily be brought to trial; be it therefore enacted, by and with the authority aforesaid, that it shall and may be lawful for the justices and judges of Oyer and Terminer and gaol delivery to be named in

and appointed by the commissions to be issued under the authority of this act, or any two or more of them, to enquire of, hear and determine, any offence or offences committed or alleged to have been committed on the high seas." Then it goes on further, "And to deliver the gaol of Newgate of any person or persons committed or detained therein for any offence or offences alleged to have been done and committed upon the high seas." So that the court has the power to enquire into an offence committed on the high seas, and power to try a person committed for trial on the high seas when in custody. Therefore the jurisdiction over the person of the principal offender depends, like the case of felony, forgery, and various other matters, upon the custody of the party. That is, he must be at the bar; and I admit, according to recent decisions, it is not necessary that he should have been previously apprehended and committed. If he stands at the bar, he is in custody so as to give the court jurisdiction to try him. There are two classes of cases contemplated by that 22nd section. They might here possibly enquire into the offence of Loose, upon which the guilt of the accessory might be dependent, but they cannot try the principal offender unless that offender be committed to, or detained in, Newgate for an offence committed upon the high seas. I will merely mention that the King v. Easterby (Codling's case), reported in Russell's Crown Cases, p. 37, decides that the mere fact of a party being accessory on land to an offence committed at sea, will not make him tryable under the jurisdiction of the Admiralty. That was decided in Easterby's case, commonly called Codling's case; therefore the 14th section of the statute would not give this court jurisdiction to try the offence as an admiralty offence. It could only be by reference to the authority the court has to try the principal offender, under the 9th section of the 7th George IV., that the court could try the accessory before the fact, assuming the fact to be as my friend stated it, that the casting away was on the high seas, and that the accessorial act could not be there, but must have been in this country.

Then, my Lord, there might be said to be another point arising out of it (though in Easterby's case the point did not arise), that an accessory may be tried in the county where the accessorial act takes place. But then I take it, from my friend's statement, that Mr. Michael Wallace was at Liverpool at the time of the sailing of the vessel, and previously to that, though the evidence, or the instruments of evidence, which he has

opened in order to establish and to shew the intent, were in London. The vessel sailed from Liverpool in the presence or shortly after the presence of the prisoner; and, therefore, if my friend relies upon that, he has to make out that the accessorial act was in London or the limits thereof. I apprehend, therefore, that the court has no jurisdiction to try this case.

I will merely mention another point which I could not imagine the Court would decide immediately, but if there is any other point to be considered, this might also enter into consideration,—namely, that it is very doubtful, upon the construction of the section of this statute upon which the indictment is founded, whether the destruction of a ship, of which the party is a part owner, is a destruction of a ship contemplated by this Act. The Act, which this Act repealed, was the 9th Geo. 1st., cap. 22, in which there was a provison against parties setting fire to "any house"—words which were quite as general as these "any ship;" and upon the construction of that Act, it was holden, that a man might set fire to his own house without being guilty of an offence, and, accordingly, this very Act of Parliament was passed to get rid of that difficulty, (the point having been hit upon that statute;) and when it comes to deal with the case of a man setting fire to his own house it provides for that case, which is strongly in my favour, for when it comes to ships there is no provision of the kind. The third section says, as to houses—"whether being in the possession of the party or not," but as to ships there is no such provision. They have, therefore, cured the blot which was hit as to houses, but they say nothing in the section applicable to ships. I merely throw that out to the Court. The Court was kind enough to intimate that, without renewing the former objection, the point should be saved.

Lord Chief Justice Tindal. The words of the statute are "to prejudice any owner or part owner."

The Attorney General. Yes, my Lord; and the intent is laid here to defraud Howden and Ainslie, the part owners.

Similar evidence was then given in this case as had been given in the case of PATRICK MAXWELL STEWART WALLACE.

DEFENCE.

Mr. Jervis. May it please your Lordship,—Gentlemen of the Jury;—In addressing you on behalf of the unfortunate gentleman at the bar, whose character, liberty, and future prospects, are now hanging upon the thread of your decision—thanking you for the attention that I know you have bestowed upon this long and tedious enquiry, I must entreat you to lend me your attention for a still longer period, while I endeavour, as clearly as I can, to unravel this, which I admit to be a most complicated enquiry—to point out to you, as I trust I shall do with fairness, the evidence which may be said to bear most hardly against the prisoner at the bar, and to explain, as I hope I shall do to your satisfaction, how great a portion of the testimony, which has been necessarily introduced (and of that I do not complain) with the view or with the hope, of ultimately connecting Mr. Michael Wallace with that evidence, is not applicable to the present enquiry.

Gentlemen, in approaching this investigation, it is hardly necessary for me to entreat of you to dismiss altogether from your minds everything which may previously have occurred. I concur with my learned friend, the Attorney General, in his observations as to the extreme importance of this enquiry. I concur in and adopt his suggestion as to the necessity of protecting property, exposed as the property of underwriters is, under circumstances like the present. But inasmuch as this case is deep in its importance—inasmuch as we are all interested in the protection of property otherwise unprotected, and have, if not our prejudices excited against the party accused, at least our interests and feelings enlisted on behalf of the accuser,—by as much as the case is important, and as our feelings may be supposed to go along with the accusation, by so much must your acting on your oaths and sworn to decide upon the evidence and the evidence alone, approach this enquiry, in the language of the learned judge, to whom on a former occasion allusion was made, with your eyes and ears shut to everything that has previously occurred; watching the evidence, as it has been detailed before you, from its commencement to its close, and upon the evidence, and upon the evidence alone, must your verdict be founded.

Gentlemen, although it is impossible for a moment to suppose, that you are ignorant of the result of the proceedings on a former occasion, I am quite certain that you will approach this case with a perfect knowledge that much may have been introduced into that case, which is not applicable to the case now submitted to your consideration and determination. You are not sworn to decide upon the evidence that was offered in that case, but upon the evidence laid before you in this; and your duty is to lay altogether out of your consideration anything you may have heard with reference to the case of Patrick Wallace, and to found your verdict alone, upon the evidence which has been adduced before you in this most important case. I feel that I am wasting time in making these, which are mere cautionary remarks; for I feel quite certain that the interests of the prisoner at the bar, are quite safe in the keeping of the learned judge who presides, and who will direct you on this occasion; and I feel quite satisfied also, that he is safe in your hands, and that when you have sworn to decide upon the evidence in the case, you will look to that evidence alone, unbiassed, uninfluenced, and undisturbed by anything that may have occurred before.

Gentlemen, I know not whether the learned Attorney General, when, in his concluding observations, he took occasion to state his approbation of the bill under which I have the honour now to address you, anticipated from me any observations with reference to the policy of the enactment in question. If he did so, certainly it was without the least foundation. I used my humble efforts, in another place, to carry this which I conceive to be a most beneficial measure. I am glad to find that it has worked, I believe, to the satisfaction of the highest tribunals in the country; and the learned Attorney General having before, privately, expressed a correction of something which has been supposed to have been said by him on a former occasion, I am glad to have this opportunity (having been engaged with him in the case to which reference was made) to confirm what my learned friend has stated, and to contradict that which has been more than once repeated as the publicly expressed opinion of the learned Attorney General. Certainly, nothing of the kind imputed to him fell from his lips on that occasion. The substance of what he stated to you yesterday is the same as he stated then; and I entirely concur with him in the observation which he made, namely, that if the effect of the bill were to be, that civil questions were to be decided in a criminal court, that law would be a curse instead of a blessing.

Gentlemen, I take it to be the duty of a counsel for a prosecution to do that, which, I admit, my learned friend the Attorney General has done on this occasion, most candidly and fairly—namely, to state, according to his ability (and in this case it has been done most ably), the facts to be laid before the Jury, without comment, and without argument; and, Gentlemen, I greatly mistake the duty of an advocate for a prisoner if it is to do more than I shall humbly endeavour to do to-day—to guide the Jury in arriving at the truth of the case, without endeavouring to excite (as, indeed, I have no means of exciting) their passions or feelings in favour of the party whose interests are confided to his care. In this case, therefore, my intention is to lay before you a simple and plain narrative of all the transactions in which the prisoner is proved to have been engaged, directing your attention to such parts of the evidence as bear against him, in order to lead your minds to a correct judgment upon the whole of this complicated case. I have not the means of exciting your passions and your feelings on behalf of the prisoner; nor do I think it would be to his interest that I should do so, if I possessed the power; as I am quite sure you, as men of experience and judgment, would consider it as an insult to you if I attempted to go from the real question before you, and to embark into matters not relevant to the subject-matter of this enquiry.

Now, Gentlemen, I apprehend that, in order to arrive at the conclusion of the guilt of the prisoner, there are but two substantial facts for your determination; because, I admit what was stated by my friend the Attorney General, that, legally, a man must be held to contemplate, or intend, the direct consequences of his act, so that the intent would be made out in this case if you should find in the affirmative (which is the substratum of the whole enquiry), that Captain Loose wilfully cast away the vessel; and, if you should find (having found the first in the affirmative) that Mr. Michael Wallace, before that was done—not adopting it afterwards, but before it was done—procured and incited the captain to the commission of that offence. Those are the two questions of fact to which you must direct your attention.

Now, Gentlemen, although legally, according to the frame of the indictment, before you can come to any conclusion, with respect to the guilt or innocence of Michael Wallace, you must find the first question in the affirmative—namely, the guilt of Captain Loose. I shall adopt and follow the course which was pursued

by my friend, the Attorney General, and take the earlier part of the transaction before I come to the loss of the vessel. But, Gentlemen, I must remind you that these two questions are totally distinct. In inquiring whether Loose wilfully cast away the vessel, you must proceed as if Loose were here alone upon his trial, and unless, independent of all the insurances (even though you should think them suspicious), you should be of opinion in the affirmative, that Loose did cast away the ship, you have no right to import into the consideration of that enquiry, any thing which might have satisfied you, that Michael intended to do that, which subsequently did take place; for the question of Loose's guilt or innocence must be decided by the evidence against him, if he alone were standing upon his trial before you; and, therefore, before I apply myself to the evidence of the earlier transactions, I will just (subject to the correction of his Lordship) state in a very few words, not the nature of the evidence, but the instruments of evidence which I apprehend would be alone admissible against Loose. It consists directly of the testimony of Schultz; because if there were no evidence of casting away the vessel, of course you could not tell whether it was lost by accident or by design. That evidence is confirmed, says my friend, by evidence of a foregone conclusion, to do it as detailed by Maxwell, the mate—confirmed on one occason by Tait, the captain of the Bencoolen, and, as my friend says, further confirmed by the circumstance of his signing bills of lading for goods which, in point of fact, were not on board. Those are all the instruments of evidence, I believe, against Loose. All the insurances—all the previous and all the subsequent conduct of Mr. Michael Wallace — unless he is brought into connection with Loose, and unless he is shown to have been with him at the time of the act, must be dismissed from your minds when you consider the principal and important question in the case, the question of the guilt of Loose. But my friend has adopted a different course. He has gone through, I hope not with a view of raising a prejudice in your mind, the earlier transactions in the case, to show that Mr. Michael Wallace must have contemplated that something would happen to the ship, and, therefore, to induce you to believe more readily, that that which Michael Wallace did contemplate, actually occurred by the misconduct of Loose. Now, how does he make that out? He says, "I will shew you that it is so, because the ship being of the value of 2000*l.* only or thereabouts, and the chartered freight out being

of the value, in a lump sum, of 300*l.* Howden and Ainslie, by the directions of Mr. Michael Wallace, the owner of three-fourths of the vessel, and the ship's husband, had effected an insurance which would have covered the value of the ship, and, therefore, all polices, beyond those two effected by Howden and Ainslie, are fraudulent, because they are above the value of the ship; and, therefore, Michael Wallace must have had some improper motive for effecting those further insurances." Then, Gentlemen, he also says there are insurances upon freight. The outward freight was adequately insured, says my friend, by Howden and Ainslie, and therefore when you find that further insurances were effected upon the freight, you must suppose that Mr. Michael Wallace had an object in effecting them, which will lead you to infer that the intention was, that the ship should be cast away. Thirdly, my friend says (and that will be likewise a most important enquiry), policies to an enormous amount were effected on goods supposed to be freighted by the ship, which goods never were on board. I shall have much to say upon the latter class of those insurances, but with your permission I will take each of them in their order as I have detailed them to you.

Now, Gentlemen, it seems that this vessel was purchased two or three years before the loss, at the rate of 1600*l.* She was a vessel requiring considerable repair, because, shortly after that, 600*l.* was laid out upon her; therefore, according to the value of the ship originally, if you take only the cost price of her in a defective state, and the money laid out upon her to make her a first class ship, she was, at the time of her sailing, worth 2200*l.* that is 1600*l.* the cost price, and 600*l.* expenditure upon her; and I think it is not a very strong inference, to ask you to draw, if a vessel costs 1600*l.* in such a state as to require 600*l.* to be laid out upon her, that when she is made, in the terms of Mr. Howden, a first class vessel of a superior build, and well fitted in every respect as a ship, she was improved in value beyond the actual expenditure of the 600*l.* Therefore, it would seem that there is no very exaggerated view taken of the value of the ship when Michael Wallace authorizes Messrs. Lyndall and Hall, or Messrs. Selden and Johnson, and requests them to effect a policy upon the ship, not to the full amount, but to value the ship at 2400*l.* 2400*l.* is what Mr. Michael Wallace values the ship at himself in a letter to Lyndall and Hall, or Selden and Johnson, who are most respectable persons. Beyond that,

there was, according to the evidence of Mr. Howden, 269*l.* expended upon the outfit, for, although my learned friend, in answer to a question which I put, said that Mr. Howden had stated, in answer to a question from my friend, that he had not seen the outfit of the ship, we are, of course, bound to presume he took care that the money was properly laid out. The outfit upon the voyage, therefore, was 269*l.*, which, added to the 2400*l.*, would make 2669*l.*, which certainly would well justify Mr. Michael Wallace, in his letter to the same respectable brokers, in valuing the outfit at 300*l.* He says, value the ship at 2400*l.* and the outfit at 300*l.* I stop, therefore, on that matter, before I go further, to ask you whether, when he wrote to these respectable gentlemen, he was not well justified in putting the value upon it which he did; and is there anything fraudulent, or anything evincing a determination to lose the ship, in selecting men of the first respectability in London, to whom the communication should be made? He says, in the letter directed to Selden and Johnson on the 10th August, "As I now find that the Dryad must positively sail on the 20th instant, and having also learned that Messrs. Howden and Ainslie are covered their share of the insurance;" (as to which a word immediately) "and not wishing them to know that I give anything past them here, I will, therefore, thank you to effect an insurance for 700*l.* on ship and outfit valued at 2700*l.*" And, Gentlemen, when you look to the policy which effects that insurance, you will find that that 2700*l.* is thus distributed—2400*l.* upon the ship, which he was well justified in estimating as the value of it, and 300*l.* for the outfit, in respect of which Howden and Ainslie paid him their proportion of 269*l.* It seems, therefore, that if you take the round sums, which my friend was scarcely justified in this case in taking, that the insurance effected by Howden and Ainslie did not cover what Michael Wallace had a fair right to suppose was the fair value of the ship; and God forbid that you, as mercantile men, should be called on to determine the guilt of a man because, in effecting an insurance, he takes a large margin for his indemnity. You are perfectly aware that that is almost universally the case, and though men will not throw away premiums in effecting insurances where they have nothing to answer the insurance, yet, when they are about it, they generally take a pretty fair margin—at all events, sufficient to clear them, so that they shall sustain no loss. An insurance to the amount

of 2400*l.* is nominally effected by Howden and Ainslie on the ship, but Mr. Wallace was well justified in valuing it at 2700*l.*

Then, Gentlemen, let us see whether my friend's statement is correct with respect to there being an exaggerated policy upon the ship and outfit. Now, in order to ascertain what is a clear and fair indemnity for a ship in a policy, you must ascertain (and I directed questions to each of the witnesses with that view) what the party receives if there is a loss. The value of the articles insured, you will recollect, is increased when you come to adjust the loss by the premiums you pay in respect of the insurance, and by the per centage and brokerage necessary for the recovery of it.

Now, Gentlemen, let us take the different insurances. The insurance for 2000*l.* is effected on the ship by Howden and Ainslie. That is in the Marine. What was the amount received on that? There is first seven guineas per cent. premium—that is 140*l.* odd, or 150*l.*—there is the duty, and there is also the commission, so that you will find, with respect to this sum, that the 2000*l.* was reduced about 200*l.* I am taking it in round numbers. The next was 700*l.*, upon the ship, in the Neptune—seven guineas per cent. is to be taken from that. That is in round numbers 50*l.* You have got to take the commission, which the broker proved to be thirteen guineas. You have to take the stamp, which is 3*l.* 3*s.* as he proved, or it may be 1*l.* 15*s.* So that we may take that which would be supposed to be 700*l.* as the value of the insurance, as producing 640*l.* or 650*l.* The next policy upon the ship is 500*l.* take that in the same proportion, there would be thirty-five guineas for the premium, and brokerage at the same rate—in all from 45*l.* to 50*l.*; so that from that 500*l.* he would receive 450*l.* or 455*l.* Now, you will find that the result of that will be this,—1600*l.* as I shewed you, was the purchase of the ship originally—600*l.* was expended upon her, making 2200*l.* Michael Wallace valued her, and I think correctly, at 2400*l*—269*l.* for the outfit, which he put at 300*l.*, which would make 2669*l.* as the real value of the ship. You will add the premium, the duty, and the commission to the value of the ship, and see what he ought to have received as an indemnity. There are the broker's charges and so on 283*l.*—broker's charges, premiums at seven guineas per cent., and the duty, which leaves the value of the ship 2952*l.* Now let us see what he has effected? —2000*l.* he has effected, 700*l.* he has effected, and 500*l.* he has

effected—3200*l.* Now, I ask, is there upon that statement of fact, (and it is one that must bear enquiry, and cannot be wrong) any such exaggerated over-value of the ship, and of the interest which Mr. Michael Wallace had in the ship, as to induce you to suppose, as a foregone conclusion, that a man who insures 3200*l.* on that which actually costs him, with insurances and other charges, 2950*l.*, must of necessity have determined when he effects that insurance to lose the ship? Is there that reward or inducement in that sum, namely, between two and three hundred pounds, which necessarily leads you to the conclusion, that a man who has such a margin for his protection, doubting, as he had a fair right to do, whether expense may not be incurred in the recovery of that indemnity,—intended wilfully to lose the ship.

Now, Gentlemen, allusion has been made—not in the statement of my honourable friend, but indirectly—to the terms of the letter of Michael Wallace, in which he says,—" Messrs. Howden and Ainslie have insured their interest, and I am anxious to protect my interest, and do not wish it to be known to them that I let anything go out of their hands," and you might perhaps conclude something against my client, from their having no notice of these policies. But, Gentlemen, with that you have nothing whatever to do. It is perfectly indifferent, in this enquiry, whether Michael Wallace did not communicate that matter to his joint owners; because unless they were called on to contribute a portion of the premium which he paid, as the consideration of the indemnity given to the insurance offices, they had no right to complain; because each man has a right to insure, and each man constantly does for his own protection, insure his particular part of the vessel. They contributed not a farthing to the premiums, which were the inducement to the underwriters to take the risk, and although the fact of concealing it from Howden and Ainslie might be, in the event of the loss of the ship, and in the event of Mr. Michael Wallace coming upon the underwriters and claiming as for a total loss, in respect of an entire interest in the ship, some ground for imputing fraud, or an attempt to defraud the underwriters, it is no reason whatever (when Howden and Ainslie did not contribute to the insurance, and when he himself had not more over-assured than is the practice of the most respectable ship-owners in this metropolis) for saying that it should lead you to an irresistible conclusion, that, because he had not told his part-owner, who is not strictly a

partner with him, but who merely has his separate interest in the ship, he intended to destroy the ship, for the purpose of defrauding the underwriters. I think I have, therefore, clearly shown to you, that there is not that great disproportion between the value of the ship and the policies effected upon the ship, as should induce you to concur in the observations which my friend, the Attorney General, made, for the purpose of leading you to a conclusion that the ship was lost—that the ship had been fraudulently and grossly over-insured beyond its real value.

Now, Gentlemen, I come to the freight—and the freight is capable of as clear an explanation as the former. Now, I will take the policies again in their order. Let us see what the freight is. The freight of vessels of this sort, as you know, is of a double character. You may insure your outward freight, or, you may insure what I understand by the word, chartered freight—your freight out, and chartered home. You may insure either, or both. Howden and Ainslie had insured the outward freight only, for 300*l.*; because, by the charterparty between Zulueta and themselves, and Michael Wallace, the ship's husband, the ship was chartered for 300*l.* Whether she was chartered out and home, or not, I do not exactly know.—

Mr. Bodkin. It was a charter out only.

Mr. Jervis. Howden and Ainslie effect the policy from Liverpool to Santa Cruz, and Cuba, and her ports of discharge; and it is upon the chartered freight.

Lord Chief Justice Tindal. That is the freight in Zulueta's charter?

Mr. Jervis. Yes, my Lord. Therefore, there was 300*l.* that we have no difficulty in ascertaining. 300*l.* was the freight which Zulueta was to pay to Howden and Ainslie, in the proportion of one-fourth; and, to Michael Wallace, in the proportion of three-fourths, for the charter of the vessel from Liverpool to her port of discharge at Santa Cruz. Now I am coming to make an observation which I thank my friend for reminding me of. Are we to scale these matters with the greatest precision and nicety—and are we to condemn a party in the perilous situation of Mr. Michael Wallace, because there are circumstances in his conduct which cannot bear when the matter is ripped up, the strictest investigation, and which may look suspicious when it comes to be investigated and weighed by fair traders in a commercial point of view? Of course my friend must admit the high respectability of Howden and Ainslie. That

is a matter which is notorious in the city of London. It is something that they were associated with Mr. Michael Wallace, —I say it is much in favour of that gentleman that he was a part-owner with them. But what is their conduct with respect to this freight? The charter shews that 200*l.* of the lump sum for the freight was paid in advance, and yet so loose is the practice of insuring, and so indifferent are the parties insuring—whether the assured or the assurers, as to what may be the real state of the case, that Howden and Ainslie, who had in this outward freight but an interest of 100*l.*, actually insured the chartered freight for 300*l.*—200*l.* of which had been paid.

Mr. Bodkin. It is out and home.

Mr. Jervis. The ship goes out to her port, and back to England; but the insurance is on chartered freight for 300*l.* I will come to the other policies immediately. Now, in addition to that chartered freight by Zulueta, of 300*l.*, you have it in evidence, not only from the testimony of Mr. Howden, the part-owner, but from the letters of Michael Wallace, and from the insurances themselves, that the Dryad was chartered home to Swansea with copper ore; and whether she was chartered or not, it seems to me she must have been, because it is "as per charterparties" in the policies.

Lord Chief Justice Tindal. They fill that up as they are told.

Mr. Jervis. At all events I have the evidence as to what is the customary freight she would earn from her port of discharge to Swansea with copper ore—it is 3*l.* 5*s.* per ton and 2½ per cent. Now, 300*l.* is the freight out— 3*l.* 5*s.* per ton on how many tons? She was registered at 204 tons. Upon the evidence of Kelly, her contents were upwards of 300. I will put it at 320, and I need not repeat the observation that whether it is to be taken at 320 or 350 the liberty of Mr. Wallace will certainly not depend upon it. Take it at a round sum of 320 tons, at 3*l.* 5*s.* a ton, that would be 1050*l.* That would be the homeward freight. Or take it at 300 tons if you like, that would be 900*l.*, and a fourth would be 75*l.* more, making it 975*l.* taking it at the lowest calculation. 975*l.* would she earn home to Swansea—300*l.* by the charter to Zulueta would she earn out. That is 1275*l.* There is, of course, as you must know, though there is no evidence of it, the brokerage charge to which the ship's husband would be entitled for the freight if she arrived. There is to be added the sum which was to be received under Zulueta's charter if she arrived safe at the port of discharge, and the freight, out and home together, would,

I am justified in saying, amount to 1000*l.* or 1100*l.* Then to ascertain the value of the freight when insured, you must by the same process as you did when you calculated the value of the ship when insured, add the premiums and the brokerage, and you will find that the premiums and brokerage upon the policies effected would, according to that calculation, amount to 119*l.*; therefore you get in round numbers between 1300*l.* and 1400*l.* as the sum which Mr. Michael Wallace (if he wants to protect himself against the loss of the ship so as to recover the freight from the underwriters,) must cover himself by insurances to make himself perfectly safe. Now, you find that there is a policy for 300*l.* effected by Howden and Ainslie; a policy for 700*l.* is also effected in the Neptune on the chartered freight; and there is another in the Mutual for 600*l.* 1600*l.*, therefore, is the whole value of the insurances, and I have shown you, if you go with me in the justice of my observations with respect to the mode of ascertaining the value of the freight, that taking the vessel to be of 300 tons burden (though the evidence is that her real tonnage was more), if you calculate the freight she would earn on her homeward voyage—if you add to that the outward freight, the premiums and the charges which the ship's husband would receive for effecting the further charter, the result would be that between 1400*l.* and 1500*l.* was the actual dry value of the freight, and that an insurance to that amount must actually be effected before an indemnity from loss could be secured. "Take off the 200*l.*," says my friend, "paid by Zulueta." Why should I take it off? This gentleman stands here, not trying a civil right, but he stands here on his deliverance—not, happily, now for his life or death, but for his personal liberty and character for ever. Why should I strike off that 200*l.* when Howden and Ainslie, men of undoubted respectability, thought that their character would not be tarnished by taking 300*l.* as the chartered freight out? 300*l.* appearing on the policy to be the chartered freight out, and my friend not asking them whether they contemplated the 200*l.* which they had received or not, do you think it is fair on a matter of that sort which, to say the least of it, is doubtful, that my friend, as counsel for the prosecution, should call upon you to draw an inference against Mr. Michael Wallace from a fact which casts not even the shadow of a suspicion on the character of Howden and Ainslie? I have no right to take it into consideration, nor have you. I have shown, then, that it was a fair transaction; and, although there may be rather an over-

value and an over-estimate of the loss, it does not so greatly preponderate beyond that which was the real value of the freight as to induce you, for the trumpery consideration of so small a sum as would have been the excess, to believe that this gentleman must have determined beforehand that the vessel should be lost. Now, these are matters, to say the least of it, of doubt; and, I believe, in this court at least, and in this presence, I shall not be checked for reminding you (and it is only necessary to make the observation as a passing remark) that when you come to deliberate on the guilt or innocence of this gentleman, you must not jump to the savage and exploded notion that because he is accused he must of necessity be guilty. The English law supposes, and most justly and righteously, that he is innocent until his guilt is shewn. You start with that assumption. It is the party who makes the charge who must carry your minds to a certain conviction and conclusion of his guilt, and when any circumstance is capable of a double explanation, one of which may be favorable to the prisoner, thank God, English juries at least act upon the principle of adopting that, which is most in favor of the party accused. But we are not, in cases of this or of any other sort, left alone to speculate upon the conduct of men from the evidence in the case. We have a right to consider what men would do possessed of common prudence, and with the cunning necessary to perpetrate a fraud. We have a right to consider what (assuming the party accused intended to commit the offence charged against him) would have been the necessary acts he would have done, and whether the acts he has done are such, as might have been done by a person wholly innocent—if they are, they go far to strengthen the doubt previously existing, and tend very much to establish his innocence.

Now, Gentlemen, I ask you upon this subject, as to the freight and insurance of the ship, if Mr. Michael Wallace had predetermined to lose the ship, would he have selected Messrs. Selden and Johnson, and Messrs. Lyndall and Hall, well-known and most respectable brokers, in the city of London, to effect the insurances for him? Was there not ready to his hand some miserable tool, who might have been a discharged servant from some respectable office, ready to do his work of concealment, if necessary, and upon the pressure of circumstances only to change his position from the prisoner to the witness? Was there not somebody who might have been found apt for the purpose of fraud, instead of their selecting these most respectable houses, above

all suspicion? I admit, for I wish not to pass over any argument against the party accused, that this might be calculated to lull any suspicion on the part of the offices with whom the insurances were effected; but, at the same time, if any doubt were entertained or expressed as to the honesty of the transaction, their duty and their conduct, no doubt would be, not only to give the fullest explanation in their power to the offices, if they were themselves quiescent in the fraud, but they would sift it out for their own protection; and yet those were the men whom Mr. Michael Wallace entrusted for the purpose of committing this alleged fraud—Lyndall and Hall were the gentlemen he selected. His brother Patrick, unfortunately got into the hands of Stott, the witness; but Mr. Michael Wallace, who acted fairly and above board, selected gentlemen above the possibility of suspicion. Well, was it the intention of Mr. Michael Wallace to cast the vessel away? My friend says it was. If that had been his intention, what would he have done? Was the trumpery consideration, for this great enterprising and fraudulent undertaking, the 300*l.* of chartered freight to Zulueta? Was that worth the certain detection which would follow? What would he have done? Did he want to effect fraudulent insurances on goods which he never intended to put on board? If that had been his intention, he would not have advertised the ship, as a general ship under his own control or under the control of his own agent, and would not have chartered the vessel, which of necessity put the agent of the charterer on board, to watch that there was no fraud in the case. He did that which alone could give the parties the means of detecting him, if the goods were not there, and he does that, in this extensive fraud, for the trumpery and paltry consideration of three-fourths of 300*l.* Were there no ports in this country less vigilant and less officious in their superintendence than the port of Liverpool? Were there no places of loading or of discharge, where the vessel would not be surrounded by officers of the Custom House? Unquestionably there were; and yet this ship, which is destined to be destroyed, is chartered to men, who, for the sake of their own character, would require protection and investigation—is assured by agents of the highest respectability—is put under circumstances, where there must be an agent of the charterers to watch what was done, and is taken to that which is the most vigilant of all ports, and most likely to detect any fraud that might be committed. We are to look, therefore, not to the constrained arguments to be deduced from matters, which may

bear a complexion one way or the other. It may be that some persons arguing, not in a serious case like this, might with ingenuity, as my friend, the Attorney General, did, argue that the policies "looked towards" fraud. But when you are considering whether what has been done is fraudulent or not, you must not overlook the conduct of the party accused, and you must ask yourselves—"Can we believe, if Michael Wallace was rogue enough to do what is alleged against him, for the purpose of defrauding the insurance offices, he would be fool enough, at the same time, to give the ready means of detection, by going to the most vigilant port in the kingdom—by doing that which alone could place an active agent of another party, to watch over the ship and to check the fraud, and by going to men, who as charterers, and agents for the assured, even if the offices had no suspicion, would for the sake of their own character, have required the strictest investigation?" I think, therefore, I have shown you, that in so far as the ship is concerned,—in so far as the freight in question is concerned, and in so far as the conduct of the party can be any test of the honesty of the transaction,—if there be a doubt, the doubt hangs in favor, and considerably in favor, of the prisoner.

I come now to the goods, and I do not conceal from myself that if you could believe, as was roundly stated by my friend the Attorney General, that the goods were never on board at all—if you could believe that there is no question as to the goods not being there, it is strange and suspicious, at least, that the captain should have signed bills of lading for goods not on board, or that premiums should be paid on insurances on goods as to which there was no possibility of risk. I admit that; and, therefore, I come to enquire what evidence there is, in the first instance, of policies with respect to goods; because his Lordship has told you, in the course of this discussion, in answer to an objection more than once, and, I fear, to tediousness, urged by me to the court, that all these various policies effected by Patrick are but as waste paper in this case, unless Michael is connected with them; and, therefore, although I know the extreme difficulty that must exist in the minds of any men not acting under the sanction of an oath, in getting rid of the prejudice that must be excited by the production of evidence before them, even though it may not be legitimate—I am quite certain that if I shall show you, as a preliminary fact, that Michael is not affected by the policies done by Patrick—so far from acting upon any

prejudice which that evidence might be calculated to excite in your minds, you will, as men of honour and probity, rather lean against it, and distrust even the evidence which may be applicable, rather than do a gross and enormous injustice, by acting on evidence which should not be received.

Now, Gentlemen, let us see what the policies are which are effected. There is no question whatever that all the policies which were effected by Stott, were effected entirely upon the instructions, and entirely on the behalf of Patrick; because Stott never dealt with Michael. He never saw him, I believe. The instructions are given by Patrick; and though Patrick, at the time he gave the instructions, might or might not (it is immaterial whether he did or not) have said it was for Michael, there is no authority proved from Michael to Patrick to effect them; and, therefore, they are Patrick's, and Patrick's only.

Now, Gentlemen, we will see what they are. There is one in the General Maritime, I think. That is the first, and it is for 1264*l.* 12*s.* That was effected by Stott—80 per cent. was paid, you recollect, in the first instance, upon the claim being made. The money was given by Stott to Patrick; and now, I wish to ask you, with reference to this policy, is there not—not only an entire absence of all testimony which alone would be sufficient to connect Patrick with Michael, but is there not, with reference to this insurance, conclusive evidence that Mr. Michael Wallace did not know of its being effected? Patrick was anxious to get money. He claimed as for a total loss. The General Maritime did not like the form of the protest—as to which I shall have a word or two to say presently; and, in passing, I may say it now, though I may have to repeat it by and by—that it is a very odd thing, that if the ship was to be lost, and Loose was the clever man they supposed he was, he should have been such a shuffler and bungler as to have made out a protest which should excite suspicion in the office. If he had intended to do that which is imputed to him, he would have made the protest upon the face of it beyond all suspicion. However, it seems they did not like the form of the protest. They wanted a letter which the captain had written, which ultimately Patrick got. How did he get it? He paid two guineas for it. If it had been Michael's policy—if he had an interest in it—or if Patrick was the agent of Michael, do you not believe that he would have got the letter and all the documents without bribing the clerk of a party, as he said he did, forthe purpose of getting it without his brother's

knowledge. I say, therefore, that in addition to there being no direct evidence to affect Michael with regard to this policy, there is that negative testimony to which I have alluded, which shows from the expression dropping at a time when it could not have been anticipated that such a charge as this would be brought forward, and which must have been the natural expression of what Patrick knew to be the fact, that Michael had no interest in it, and that he, Patrick, had been obliged to bribe somebody else to get that, which, if Michael had an interest in it, he would have given him as a matter of course. Now, how is Michael Wallace affected by this? And here I must go with a rapid step from the beginning to the end of my friend's case; for, they say, "We will connect Michael with this, by shewing that some of the proceeds came into Michael's possession;" and, from the opening of my friend, and from their repeated statement that they should connect him with it, I confess I was surprised at the impotent conclusion of the evidence by which they sought to affect him. How do they affect him? The money was paid, as you have heard, in two sums. 1012*l.*, or 80 per cent., is paid by a cheque to Stott for Patrick. It is handed to Patrick, and that 1012*l.* is paid at the London and Westminster Bank, to the account of Patrick. So far so good. Good, because Michael Wallace is by no means affected by it. How is the balance paid? The balance was paid by a cheque of 253*l.*; from which Mr. Stott deducted—not for his premiums, for those had been paid beforehand—but for his broker's charges and other matters, 53*l.*, giving about 200*l.*, the balance, to Patrick. Now see how Michael is sought to be affected by this. There is the account which Patrick has at the London and Westminster Bank, and it seems that that account is composed partly of the 1012*l.* and another cheque of the Alliance. But the only way in which they affect Michael with either of those sums is this. Patrick, living in the same house with his brother Michael, at Cooper's Row, where they had been residing with their father, and Michael being, as I presume, from his being the ship's owner, the man more ready in money, Patrick seems to have owed his brother Michael the sum of 200*l.*; and drawing out, on the 8th of February, 250*l.* from his own account at the bank, one of the notes in which that 250*l.* is paid, is a note of 200*l.*, No. 83,633, which, it seems, was paid to Michael; for Michael pays into his banker's the sum he has so received, I suppose, in payment from Patrick. Now, I ask you, whether that ought to be sufficient to

affect Michael Wallace with a guilty knowledge of the fraud upon the General Maritime Assurance Office, if any fraud was indeed committed. There is no other evidence affecting him. The brothers are living together; one of them, as it must be presumed from his difference in position, having more capital than the other. Whether it is Patrick pays to Michael, or Patrick who lends to Michael, 200*l.*, is unimportant, and it would have been just as good for the purpose of connecting them if the fraud had been perpetrated fifty years before, because if this be considered as sufficient to affect Michael Wallace, then if Mr. Patrick Wallace having an account at the London and Westminster Bank, which account, if you please, was obtained by highway robbery, or by some other means (I care not what—for the argument would be just the same), and if it could be proved that Patrick, or anybody else had stopped a man on Hounslow-heath, that he had stolen from him money with which he opened an account at a bank, and five years afterwards gave to a particular individual a note he received in respect of that account, that would make the man receiving it, an accessory before or after the fact to the principal felony; for the same evidence, which has been given in this case, would be evidence in that, except the distance of time, which could make no difference. They have not shown, or pretended to show, that the cheque given by the General Maritime, or any part of it, came into the possession of Michael; but they merely show this—that Michael having, as they suppose, a joint interest in the whole of the proceeds received from the General Maritime, gets only, on the 8th of February, 200*l.* from his brother, that gentleman having received that sum from the London and Westminster Bank in part payment of a cheque which he had drawn upon that bank for 250*l.*

Now, let us go to the Alliance if you please. The next is the insurance which is effected by Stott, by the direction of Patrick, on a paper in the handwriting of Patrick, vouched afterwards by a bill of lading in the handwriting of Patrick, but it is effected in the name of Michael. Now, I am quite certain I need not remind you that if I use, or you use, or Patrick uses, the name of any third party, that will not make that third party a principal. Patrick gives the instructions—Patrick receives the money—Patrick writes the particulars of the goods—Patrick fills up the bill of lading—and Patrick makes the claim. The

money is paid to Patrick by Stott, and what does Patrick do with it? He pays it into the London and Westminster Bank, and there is no more evidence about it, because all that they prove or trace to Michael from the London and Westminster Bank, in respect of Patrick's account, is the 200*l.* I have mentioned. I put my friend in this difficulty. Out of which policy did that 200*l.* come? Was it the Maritime or the Alliance, or both? They would say, why both of course. But is it not merely this, that he having made up his account out of those sums, either lends, or pays, or gives, it is immaterial which, the 200*l.* which might have come out of any other account; if instead of commencing his account with the money received from the General Maritime and the Alliance he had begun like his brother with a balance in hand before the policies were effected? It is quite manifest, therefore, that if the matter rested on the bare payment of this 200*l.* by Patrick to Michael, from a fund created, I admit, by the money received from the General Maritime and the Alliance, you could not say there was no doubt that Michael must have been privy, must have incited, and must have known, at the time of effecting it, that Patrick was effecting these insurances for the purpose of fraud.

Now, Gentlemen, I will take you to the Neptune. Now, the policy in the Neptune, if you recollect, was effected by Lyndall and Hall, by the directions of Patrick Wallace. The insurance upon the goods effected in the Neptune for 687*l.* was effected by Lyndall and Hall, by the instructions and directions of Patrick Wallace. It is effected by themselves, in their own names, "Lyndall and Hall, as agents," and, therefore, from the policy itself nothing is to be drawn, but they tell you Patrick was the party who gave the instructions. It is true that he gave them on behalf of himself and his brother. That is true. But that would not affect Michael, unless it can be shown that he participated in it. The claim was for a total loss. Who made the claim? Patrick. Who produced the bill of lading? Patrick; it is in his handwriting. Who signed the letter of indemnity? Patrick; it is in his handwriting. It therefore appears that the policy was effected upon the instructions of Patrick, he giving the bill of lading in his own handwriting—he receiving the money, and he signing the letter of indemnity which was required by the insurance office, in the joint name of his brother and himself. Now, how do they attempt to fix this upon Michael Wallace? They say, "We will shew you that Michael

participated in it, because Messrs. Lyndall and Hall effected two insurances," as I admit they did. They effected one insurance which was by the direction of Michael, and a fair and honest insurance it was, upon the freight. They effected likewise a policy of 687*l.* upon the goods, by the instructions of Patrick, in the joint name of Michael and himself. "We will show you," say they, "how Michael is affected with this policy by the banking account to which we will have reference." And accordingly they turn to the account of Mr. Michael Wallace with the London and Westminster Bank, and Messrs. Lyndall and Hall having proved, I think, that they paid on account of these two policies one cheque for 500*l.* and another cheque for 700*l.*, they seek to trace that money to Michael's account, and it is perfectly true that those two cheques having been paid by Lyndall and Hall, in respect of the policy in the Neptune, upon the freight, which was effected by Michael, and in respect of the policies upon the goods, which was effected by Patrick in the joint names of Michael and Patrick, those two cheques were paid in to Michael's account with the London and Westminster Bank.

Now, it appears that each had a separate, undivided, and distinct interest, and, if upon the settlement of the freight policy, the whole had been settled at once as for a total loss, and if at the same time they had settled the policy upon the goods as for a total loss, and you had found a cheque for 687*l.* payable to Patrick Wallace, and another cheque for 700*l.* or whatever the amount is, payable to Michael Wallace in respect of the insurance upon the freight, if both insurances had been settled at the time, and if the money received in respect of both had found its way into the account of Michael Wallace, you would have said (and even then it would have been only a matter of doubt) either these cheques have been paid to Michael, because, in truth, he has an interest in the policies, or else when the money was received from the insurance office by Patrick, it was handed over by him to his brother in the settlement of some account between them. But, Gentlemen, see how the fact is. Mr. Michael Wallace has an undoubted claim for 600*l.* in respect of the freight. 500*l.* is paid in the first instance, and is paid in one cheque. That does not cover the whole of his claim—there is still 100*l.* due to him in respect of the freight. Then the other policy upon the goods is adjusted, and then it is—"Pay Mr. P. Wallace," and Patrick Wallace having an

interest in the goods, and having received this cheque in payment of the balance due upon both policies, pays to his brother Michael what is due to him in respect of the freight, and gives him this cheque—which is crossed to a banker.. And because Mr. Michael Wallace has a cheque paid in to his account, which cheque must go through a banker, and gives the balance to his brother, it is for that reason, and that reason only, admitting as it does of a clear, or of a possible explanation, that in a matter of so much doubt, my friend would ask you to assume, in the absence of all positive proof of the fact, that the policy effected by Patrick—which was vouched by Patrick, the bill of lading for which was in the handwriting of Patrick, and the indemnity in respect of which was also in the handwriting of Patrick, was effected not for Patrick—though by Patrick—but for Michael, without one tittle of evidence to establish that fact.

There are, therefore, Gentlemen, three of the policies which, as it seems to me, so far as it is sought to come at Michael with them, must be dismissed from your consideration when you come to consider the question, as to whether the goods insured were put on board or not. The only insurance which would affect Michael is that which was effected in the Mutual Indemnity. You see, there were three policies effected in the Neptune. There was one effected upon the freight. There was one effected upon goods; and there was one effected by Lyndall and Hall, or by Selden and Johnson, for Michael and Patrick. There is only one policy upon goods, as to which you directly bring Michael present as giving instructions, and that is the Neptune for 687*l.* dated the 21st of August, 1839.

Now, Gentlemen, I am endeavouring, as far as I can, to state accurately in the immense complications of dates and documents such only as in my view appear to affect the prisoner, and, I think I am correct in saying, that there is no evidence of direct employment to effect an insurance upon goods, except this effected by Lyndall and Hall, by the direction of Michael, for 687*l.*; one of the others being effected by Stott, by the direction of Patrick, in the Alliance, I think, for 700*l.*, and the other in the Neptune, by Selden and Johnson, on behalf of Michael and Patrick, but by the direction of Patrick, who filled up the bill of lading, and who alone signed the letter of indemnity, though it professes to be in the name of both.

The only direct evidence, therefore, of any insurance effected by Michael upon goods is an insurance to the amount of 687*l.* Now, I admit that this policy contains an enumeration of goods —thirty tierces of beef—forty-three barrels of pork—thirty-five firkins of butter, and fifty crates of earthenware. Those are the goods enumerated, and my friend, the Attorney General, says triumphantly, "Can you believe, if I prove clearly that the goods were not on board, that a party could effect an insurance on goods that were not on board professing that they were, for any but a fraudulent purpose?" I do not know whether it would be necessary for me to meet him on that part of the case, but it is better to meet him by facts than by strained inferences, and although I might be put to give some explanation if it had been clearly shown that these goods were not on board, my friend must prove to demonstration that the goods were not on board, before he lays the substratum on which he can found his argument.

Now, Gentlemen, how does my friend begin by proving it? And, again, I ask you whether (the charge being that Michael Wallace effected these insurances upon goods, intending at the time not to put them on board) he had not precluded himself from perpetrating such a fraud, by having Kelly, the agent of Zulueta, on board the ship, which would be the necessary consequence of chartering the ship to them. "But," says my friend, "I will prove it in this way. There can be no ship cleared out of any port without the captain first making a declaration as to what goods he has on board." That is a mere fiscal regulation with regard to a duty of half per cent. payment on goods exported, with the exception of salt, and one or two other things which are free from duty. Captain Loose made such a declaration, and that declaration (says my friend) "is the true criterion of what goods were actually on board at the time." But is it so, Gentlemen? Captain Loose made a declaration on the 5th. Messrs. Zulueta are gentlemen of the highest respectability, and, God forbid! that you should for a moment believe that for the paltry consideration of the duty payable on a few kegs of paint, or a few cases of hardware, or for any other consideration, they should have any desire to commit a fraud; but so far from this declaration being conclusive as to the quantity of goods on board at the time the vessel sailed, the fact turns out to be that certain goods, which were put on board by Zulueta, are not in-

cluded in the captain's declaration. That they were shipped after the declaration was made by the captain, appears from Maxwell's evidence, who proved that fifteen kegs of paint, and some cases of hardware were put on board after he came. If you are to take the captain's declaration as conclusive to shew that no goods, except those mentioned in it, were put on board, you must believe that not only Schultz but that Kelly and Maxwell have perjured themselves. What, then, is the natural inference to be drawn from this? Why, that the declaration is mere moonshine, like many other things in this vigilant and strict port. God forbid! that because certain goods, the property of Zulueta and Co., were put on board, for which no duty was paid, their character should be in any way impeached. I only allude to the circumstance, to shew you that the captain's declaration is by no means conclusive as to the goods actually on board the ship. Why should you convict the prisoner then, on suspicion, for having done the same thing that Zulueta did? It seems that these matters which are pressed against the prisoner are matters of common and ordinary occurrence in the mercantile world, and it is idle to talk of the captain's declaration being conclusive, for, without going further, it is clear that it did not contain an enumeration of all the goods on board, for it did not contain those that were shipped by Zulueta, for which they paid no duty. But, Gentlemen, you will recollect that Zulueta and Co. had not the same inducement to smuggle goods on board that Michael Wallace had. What would they gain by getting on board, without the knowledge of the Custom House, fifteen kegs of paint and a few cases of hardware? One-half per cent. That is all they could gain by it; and when my friend says, that that would be a most trumpery consideration, and no sufficient inducement to ship the goods without the knowledge of the Custom House, he forgets that Zulueta put their goods on board without the knowledge of the Custom House, and without paying duty for them; and we all know, and my friend is aware, that in mercantile concerns it is from such small and minute matters that the principal part of the profit is derived.

But, Gentlemen, had not Michael Wallace a much greater inducement than that of getting his goods on board without the knowledge of the Custom House, so as to save the duty? Had he not a great inducement to get them on board without the knowledge of Zulueta? If the homeward freight be any

criterion of the outward freight, he would have had to pay not only the half per cent. duty, but he would have had to pay freight to the extent of 3*l.* 5*s.* per ton for all the goods he put on board, because, as you are aware, the vessel being chartered to Zulueta, she became, for the purpose of that voyage, their absolute property, and no man, not even the owner, had a right to put a single article of goods into that ship without their consent, and without paying them freight. If, therefore, goods could be got in, as there was every facility for getting them in, in consequence of Loose being the captain, and in consequence of the crew being under the control of the ship's owner, and particularly of the ship's husband, they would save not only the export duty, which, though trifling, seems to have been thought of some importance by the respectable firm of Zulueta, but they would save the outward freight also which they would have had to pay to Zulueta and Co. And when my friend says that the ship was advertised as a general ship, and that it was impossible for Michael Wallace, the owner, to know whether she would be filled up by the charterers or not, has not Kelly proved that such a ship, bound from Liverpool to Santa Cruz, never has a full cargo; and, therefore, if Michael Wallace wished to fill up the vessel he knew he might do so. Therefore, with a knowledge that Zulueta would not be able to fill up the ship, with a certain profit in view and with a direct interest to get the goods on board clandestinely and without the knowledge of Zulueta, I ask you is it improbable that Michael Wallace should have attempted to put these goods on board without the knowledge of Zulueta, when Zulueta themselves, in order to avoid the half per cent., put in some goods of importance after the captain's declaration.

The Attorney General. The witness said that the value of those goods was so small that it was not considered worth while to make the entries.

Mr. Jervis. Now, Gentlemen, I allege that there being a direct interest in Michael Wallace to avoid the payment of the freight, and to save the payment of the outward duty, those goods which are the subject of the insurance effected with the Neptune, were put on board without the knowledge of Kelly, and with an intention to defraud his employers. I am bound to admit that. The position in which Mr. Wallace stands, relieves me from all difficulty as to my being supposed to compromise his character. He had, as I have shown you, a direct interest to do this. Is this an after thought? I ask you that. Is this an after thought in-

vented by Mr. Michael Wallace, or by his advisers in the exigency of this prosecution? If it be, you have a right to look at it with suspicion. If it is only at the eleventh hour, when the charge is brought forward against the party, and when he is driven to account, if he can by any means, for that which is otherwise unaccountable, that he for the first time suggests that which has never been breathed before, you have a right to ask for strong evidence to support such a suggestion, and you have a right to view his explanation of his conduct with suspicion. But, Gentlemen, it is not an after thought. When the claim was made by Patrick upon the General Maritime Insurance Office, they required further explanation, not as to the loss, but as to the salvage. That is proved by the evidence of Stott. A letter was written to the consul—to the party who of all others they would have avoided if fraud was intended—to make enquiry. There was a postscript to that letter, saying—"This communication is to be considered in confidence between us." What was intended by that postscript? Stott said to him, "It is not usual in writing to an official person abroad, to put such a postscript as this, which you would only write to an intimate friend, and I require from you an explanation, why you wish to have it appended." Had any suspicion at that time been excited, that the goods had never been shipped? No, that letter directs enquiry to be made for salvage, which assumes that the goods were there. He gives to Stott an explanation of the meaning of that postscript, which is quite consistent with the case I make before you to-day, and that at a time, when there is no suspicion of any fraud, or any motive for telling an untruth. And, Gentlemen, what is the reason that he gives? He says,—"I do not wish the consul to talk publicly of this matter, for Zulueta & Co. having chartered the vessel, were therefore entitled to the whole of the freight, and, therefore, if they knew that we had put goods on board to fill up the vessel, because she was not filled up by them, they would claim freight in respect of those goods. We have done them no harm, in point of fact, by filling up that part of the ship which their goods did not occupy, though in justice and honesty we ought to pay the freight to them." That is the explanation which was given by Patrick Wallace to Stott, one of the witnesses for the prosecution, long before any charge was made against him, and when, therefore, there was no necessity for any subterfuge, falsehood, or excuse. Here was Stott writing a letter to a public officer, who of all others would be alive to any circum-

stances of suspicion, whose duty it would be to investigate the whole matter, and who, unless cautioned, would have made the whole matter public. Patrick Wallace, says in that letter,—"Let all enquiries be made to satisfy the insurance office, but this letter be in confidence between us, for if Zulueta knows that I had goods on board the ship that was chartered to them, they will make me pay the freight upon those goods, which I put on board, well knowing that they would not be able themselves to fill the ship." That is what is stated by Patrick Wallace long before any suspicion had been excited against him, which shows that this is no after thought—which accounts for what took place, and which relieves me, therefore, from the necessity of showing when that pretence was set up.

Well, then, Gentlemen, seeing the interest which the parties had to ship their goods secretly, and seeing the direct interest they had in not having them included in the captain's declaration (for if they had been, they would have had to pay freight to Zulueta and Co., the charterers), let us see whether my friends have proved that in point of fact—these goods were not on board the Dryad at the time she sailed. They have no right to call upon you to act upon any suspicion that the goods were not on board; but they must prove affirmatively that they were not.

Now, Gentlemen, have my friends proved that without the possibility of doubt (for so they must prove it), that the goods in question were not put on board? Of what did the general cargo consist? It consisted of that which of all others was most calculated to conceal any goods which might be brought in without notice. For instance, there was a large quantity of salt, in 1000 bags. That salt came down the Mersey from the very district from whence these fifty crates of earthenware, the principal subject of this policy, would come. It would come down the same canal, as the witnesses proved. You know, there is no investigation upon the entrance of a lighter into the docks; and this large quantity of salt, and the various other things that were brought in, would be very well calculated to screen such goods as these which form the subject of the insurance in question.

Now, Gentlemen, I ask you again, have my friends proved that the goods insured were not put on board? How do they attempt to prove it? They say that to load these goods would occupy a day, or a day and a half—that is, that the whole of the goods mentioned in all the policies would occupy a day, or a day and a half in loading. Was Kelly there during the whole

time? Unquestionably he was not; because he says he was satisfied when the captain signed the bill of lading. It was his duty to see that the goods belonging to Zulueta and Co., which were going to be sent off, were actually shipped. That was all he had to do, and that was all he did. Unless he was actually down in the hold before the vessel was loaded at all, and unless he continued to watch the ship continually from that time till the time she sailed, how could he possibly speak to what goods were, and what goods were not on board? Indeed, Maxwell, the mate, says he will not undertake to swear that there were not eighty crates of earthenware in the hold. The witness has proved to you that the docks are open and accessible at all times at high water, and that all that is necessary for a lighter to do on going in is to say to what ship she is going. And when my friend says that to load these goods would take a day or a day and a half, does he believe that men who are going to ship goods privately, so that the charterers may not know it, would not take care to do it whenever an opportunity occurred? And when my friend asks you to look to the date of the bills of lading, I again ask, Is not the explanation consistent? My friend says that the dates of some of the bills of lading are before the ship actually commenced loading. Why, of course, if there is an understanding between the captain and the ship's husband that the charterers not being able to fill up the ship, they will put goods on board on their own account, without the knowledge of the charterers, they would take care to have certain things ready at hand to be put in as opportunity offers. They would not go openly and in broad day-light to do it. They would not ship them all at once; but they would do it as they found opportunity; and they would have them ready to be put on board when they could find means to do so without observation. The date, therefore, of the bill of lading is immaterial; and it is immaterial whether they were put on board on one day or another. Kelly was not there all the time to prove that the goods were not put on board. Maxwell joined the ship only two days before she sailed; and all he says is, that after he went the goods in question did not come on board. Loose, who was the captain of Maxwell, and the party to the taking of the goods on board, would not have employed men who would at once detect what, I must admit, was a fraud on Zulueta, the charterers; but he would employ men who knew not the condition of the ship, and who were unacquainted with the charter. Now the vessel holds

more than three hundred tons. The witness says that Zulueta's goods occupied about two hundred tons, and that all the goods mentioned in all these different policies would occupy about ninety or ninety-five tons. You will recollect what Maxwell said—that the ship had no bulk heads in her; and, therefore, when they talk of the ship measuring four hundred tons, and of her being capable in her ordinary hold of containing upwards of three hundred tons, you must recollect that when her bulk heads were down she would carry much more. There is no witness who can speak specifically to the goods which were actually on board, or who can identify them in any way, except that Maxwell does speak to having seen the cases of hardware which came in after the declaration of the captain. The goods are so packed that nobody can speak to the marks of them when they are in the hold; and, bearing in mind the strong inducement which Michael had to put these goods on board—bearing in mind, also, the explanation which he gave to Stott, before this charge was ever made or thought of, as to the manner in which they got there, I ask you whether you can, upon this evidence, say with such confidence as amounts to a conviction, that the goods were not in point of fact shipped on board this vessel?

Now, Gentlemen, I believe I have gone through all the introductory evidence which my friend has laid before you, and all the evidence which my friend has adduced, with reference to Mr. Michael Wallace's object and intentions before the ship sailed.

There is, however, one point which I will refer to now—I mean that miserable pretence which they set up, as to the conduct of Michael Wallace, when they say he absconded from the charge. The way in which they put it is this,—"I will show circumstances which will lead to a suspicion of fraud—I will show an interest to lose the ship, because there was nothing equivalent to the policy on board, and I will show that after the charge was first made you absconded from it." That is the way in which they put the case against Michael Wallace. What is the fact? Michael Wallace, as Roe, the officer, very fairly stated, was in circumstances of very great embarrassment. He was a bankrupt, says Roe, and shortly afterwards was so declared. A charge is made against his brother—it is made as every body must know, with reference to the ship Dryad, else, why communicate with Howden and Ainslie in reference to this charge? Are Howden and Ainslie guilty in the matter think you? and

yet they take as deep an interest as did Michael Wallace. Mr. Howden was to and fro to the brother, who was part owner of the vessel and the ship's husband, and what so natural, as that he should take an interest in the matter? Patrick was charged, it seems, with something with reference to the ship—Howden and Ainslie, the part owners—fair and honest though their transactions may have been—were of course deeply interested in the investigation; and Michael has an anxiety not to do anything which may aggravate the case against his brother. Under those circumstances, being in difficulties, and being pressed by his creditors himself, and being naturally anxious not to be compelled by threat or torture to give evidence against so near a relative, he goes away. Does he conceal himself? Is there any proof of enquiry or investigation with regard to him? Did they ask Mr. Howden if he knew where he was gone to?—No. Upon that subject there is no evidence. It was insinuated by a question put by one of my learned friends, that he was passing by a false name; but the witness was too honest to countenance the insinuation, for he said, that when he asked him if his name was Williams, he at once admitted that it was not, but that his name was Wallace; stating that he was there from a desire not to appear as a witness against his brother, and possibly he might have added, with a view to have avoided pressure from his creditors. Then there was that miserable parade of producing one or two newspapers, which appear scratched at the side, as if they had been so marked by Michael Wallace; but it turns out that that was not done by him, but the officer who found them; and this, forsooth, is another benefit to be derived from a rigid and impartial investigation, in the first instance (which should be treated as a preliminary investigation merely), that in addition to conveying to the public everything relevant to the case, or not relevant, admissible or inadmissible, so as to produce great prejudice against the party accused, every man, who, in the natural anxiety he feels for the fate of his brother, or out of curiosity as to the news of the day, is found with a newspaper in his possession, some officer or policeman will put a mark upon it, and it will be said, "Because you are shown, by having this newspaper in your possession, to have taken an interest in your brother, that is evidence from which a jury are to be asked to believe that you, yourself, have committed the offence with which he is charged." I ask whether my friends are at all justified in asking you to draw

any such inference against Michael Wallace from the fact of these newspapers having been found in his possession? I think they are not. "He went by the name of Wallace," says Mr. Roe—Mr. Howden was his part owner—Mr. Howden had taken a deep interest in Patrick Wallace, to say nothing of the distressed members of his own family. What was so natural as that the papers should be sent to him, in order that he might see how the case against his brother was going on? and if his object was to avoid detection, what could have been so imprudent as for him to have had these papers sent, as I presume they were sent, addressed to him in his own name. I admit that there is no evidence as to how they were addressed, and I cannot carry it farther than this, that if he gave directions in London to have these papers sent down to him in the country in his own name, he was doing that which would lead to his certain discovery. But finding these papers in his possession, by whatever means he obtained them, would only indicate that mere casual interest which less than a brother would take: and if he was anxious to keep out of the way, in order to avoid giving evidence against his brother, that wish would often be found in the minds of many who have not so close a tie to excuse it. Well—he goes away—what have we to do with the fact of his house being deserted? He has a wife—a young lady with whom he was unfortunately connected a few months before this charge was made against him; and is her conduct and her inexperience to be pressed into the case against her husband? Is it because you find her seeking her natural protector—no, not her natural protector, for he was away—but her next natural protector—her father-in-law, with whom she is living, and who is a gentleman of high respectability, upon whom, I know, no imputation will be attempted to be cast—is it because she is found at that place, where of all others you would expect to find her, that that circumstance is to be turned against her husband? She, in terror, as she must have been from her husband leaving her thus suddenly under the circumstances I have mentioned, seeks the roof of her father-in-law; and is her imprudence in leaving her husband's house unprotected, without any proof that she did so by his directions, to be urged as clear evidence to show, that he was conscious of having taken a guilty part in the transactions in which he had been engaged with his brother? and is that to be urged against him as the clenching nail (to fasten down his body I was going to say—but, thank God! that is over now)—is it to

be urged against him as that which is to lead you to the conclusion that he is guilty of the charge here made against him ? The evidence amounts to no more than this, Gentlemen, that the young lady, in her anxiety and distress, went to the house of her husband's father for protection—discharged her servant—leaving her house (a matter of great imprudence no doubt) perfectly unoccupied.

I think, Gentlemen, that I have now gone fairly over the various instruments of evidence that have been urged against Michael Wallace, with a view to prove him guilty of the substantive offence, with which he is charged in this indictment; and I now come to that which, in point of fact, must be your preliminary investigation, though I take it last, namely, the question as to the guilt of Captain Loose.

But, Gentlemen, before I go to that part of the case, I would just observe, that, if I have made out and established, as I trust I have, that there is no clear and conclusive testimony in this case upon which you can safely act, or upon which you can come to the conclusion that the goods in question were not put on board this ship, you cannot find Mr. Michael Wallace guilty of the offence with which he is charged. My friend has no right to argue as he did in a circle, and first to assume that the goods were not on board, which he said proved that the bill of lading was fraudulent, and then, again, to argue that the bill of lading was fraudulent, and that, therefore, the goods were never put on board; because if they do not prove, as I submit to you they have not proved, that the goods in question were not on board, then the fact of there being that bill of lading specifying the goods, makes it clear that the goods must have been there; and so far from its being a badge of fraud, it is a badge of the fairness and innocence of the transaction. Now, suppose this were an action by the underwriters to recover back the money which they have paid under these policies, on the ground that it had been obtained from them by fraud; and here, by the bye, while I am upon that subject, let me explain to you why it is that they have taken so much trouble to trace all this money, and why, with that object, they have brought witnesses here from Liverpool and other places, at I know not what expense. It is because they want by and by to convert this prosecution to the purposes of a civil action. They want to follow and ear-mark the money, so that if they should convict this gentleman, they may, by a petition to the

Treasury, get the money back. That is certainly possible, and I submit to you that it is very probable.

I now come, Gentlemen, to the question as to the guilt of Captain Loose. If they have not proved that the goods were not on board, then the bills of lading, so far from being badges of fraud, are evidence of the *bona fides* of the transaction. I was rather led off just now from what I was going to say, but suppose this were a civil action brought by the underwriters to recover back the money which they have paid, on the ground that it had been obtained from them by fraud, it would have been said, "Why do you not prove that the goods were put on board?" That might be said, and said with reason and justice in a civil case, but in a criminal case the answer would be this—and you, Gentlemen, will at once see the distinction: in a criminal case it is the duty of a prosecutor to make out beyond the possibility of doubt, that which it is necessary to establish before you can convict the party charged; and if it is not made out to the entire satisfaction of the Jury, there must be an acquittal; and although there may be a doubt in a civil case, which the party is bound to remove, yet, if he does not remove it, you know the extent of the injustice. It may be rectified by an appeal to the Court. Further enquiry may take place, and at most it is but a pecuniary sacrifice: but in a criminal case, when once a verdict of guilty is pronounced, a man's liberty is gone for ever. It is, therefore, not only a humane feeling existing in the minds of all juries, but it is a principle recognised by the English law, that in questions of doubt, the balance is to be given against the prosecution, and in favour of the accused. Better is it that ninety-nine guilty men should escape than that one innocent man should suffer. Therefore, it is a well established maxim, and a most righteous one, too, that wherever there is a doubt—that doubt must be decided in favour of the prisoner. Now, if this were a civil case it might be said, "We have shown circumstances of such doubt and suspicion as call upon you for an answer." I do not say that in a civil case that might not be said. But that will not do, when, instead of trying a civil action, you are trying an indictment. But even in a civil action what would be the answer? It would be said, "Why, mercantile men, like Mr. Wallace, could prove purchase after purchase of earthenware, butter, beef, and pork,—but what matters that? What is the use of proving the purchases you have made? That is not the

question. You must take them to the ship—you may have unloaded them in the neighbourhood of the quay—you may have put them into a lighter, but you do not take them on board the ship." That is what might be said in a civil case, but the answer even then might be, "You are calling upon me to do that, which, from the very nature of the case, it is impossible for me to do, because all this was done clandestinely, and for a purpose which, I am bound to admit, was fraudulent. It was done secretly, so that no one might detect it, and if it had been done in a manner in which it might have been brought home to me, my object would have been defeated; and for this reason I have not the means of proving that which I should otherwise have had no difficulty in establishing."

Gentlemen, apologizing for this digression, I come now to the question of the loss of the vessel. There is one thing which is perfectly clear according to the evidence as it stands, that there never was a captain of any ship blessed as Captain Loose was, with so passive a crew, for Maxwell, the mate, tells you, and Mr. Schultz also (and I shall not forget that gentleman, by and by, I hope), that when they were in imminent danger of losing their lives, they would not take down a sail, or make the least effort to save themselves, though they were perfectly satisfied at the time, that the intention of the captain was to cast the ship away. They would have you believe that their training and discipline were so good, that not only like the soldier would they, when commanded, march to the cannon's mouth, but they would lie down and drown, rather than make the least effort to save either themselves, or the ship, without the captain's orders.

Now, Gentlemen, I do not mean to attempt to "call spirits from the vasty deep," but I think it seems pretty clear now, that Captain Loose is dead. This, at least, is proved, that the agent or the chandler who supplied the Dryad, received from the captain of the Premier, some clothes and a considerable sum of money, belonging to Captain Loose, together with some information from the crew. Now, it is not very usual for a man to pretend to kill himself, and at the same time, as evidence of his death, to send over 90*l.* or 100*l.* out of his pocket. I think, therefore, that there is pretty clear evidence that he is dead. Let my friend, however, have the benefit of the doubt. He may be alive for anything I care; but this at least is plain, that dead or not dead, I am called on to defend him without adequate

instructions from him, for it is not possible to obtain them; and I may make this further observation, that that which satisfied Mr. Frost of his death, might possibly induce Mr. Maxwell and Mr. Schultz to believe him dead, and might give them confidence, from the fact of their being able to give their evidence without fear of contradiction from him.

Now, I think it may be laid down as a general proposition, that whenever a ship is lost, there is almost always blame attributed to somebody. I think there are very few cases of ships being lost, in which if you were to take—not the log book—not the story of the captain—but the story of the discontented seamen, who have even less occasion to be discontented than these persons had, you would not find that the mate considers the captain was wrong, and that the inferiors consider their superior officers wrong. That is human nature.

Now, Gentlemen, let us see what the ground of the complaint is. "First, I will show you," says my friend, "that he intended to lose the ship;" and the first piece of evidence which he gives, in order to lead you to that conclusion is, that in the English Channel, coming out of Liverpool, in stormy weather (and God knows, we needed not to have heard of the melancholy occurrence which took place there only a few days ago, to show the extreme danger to a vessel sailing there), he had the tackle of the long-boat rove. Now, that (says my friend) is a certain indication that he intended to lose the ship. Indeed? Why it is very odd that when the storm had subsided, and when they got well out of the channel, he, intending all the while to lose the ship, unreeves the tackle, and the boat is not in that state of readiness in which, my friend says, she was before.

Then, again, Gentlemen, my friend says, the captain had a chronometer on board, and would not allow the mate to look at it, but the mate does not say so; he says he has reason to believe that there was a chronometer on board, but he never saw it. Would it be any ground for saying that the captain intended to lose the ship, if he had no chronometer on board? No.—There are hundreds (and there were formerly thousands) of captains of vessels, of this class, who keep their account by a dead reckoning; and if Captain Loose did so, that you know, is just the reason why he would not have a log line or a chronometer; for the log line is not used for plumming the depth, but it is a line which is thrown out at the stern of the vessel, to enable you to

calculate the speed at which you are going. That is the only use of it, and you have it in evidence, that by observation a man can, by a dead reckoning, keep so accurate an account as to be within ten miles. If the Captain had no log line and no chronometer, that does not advance my friend's case at all. It cannot fairly be said to show any design to cast away the ship; besides which there is no evidence that there was any chronometer on board. Even if it were the duty of the captain (which I believe it is not) to show to his subordinate officers his chronometer whenever they choose to ask for it, there is no evidence to show that he had any chronometer at all on board; nor was it necessary that he should have one, as is clear from the evidence of the mate himself, who has told you almost to a degree, where they were at different periods of the voyage. I got them from him on cross-examination, in order to show you, that it is by no means necessary to have a chronometer, to enable you to keep a tolerably correct account of your course.

Now, Gentlemen, as to the choking of the pump. Do you believe that that is a certain indication that the captain intended to lose the ship? He would have choked two pumps if he had had such an intention. Besides, do you think they would have selected above all others as the vessel that was to be wrecked, the Dryad which cost the sum of 1600*l.* originally—which was a fine vessel built in the Isle of Wight, and which was made a first class ship, A 1, by recent repair, which cost no less a sum than 600*l.*

Mr. Clarkson. That was in 1837.

Mr. Jervis. Still she was an A 1, and the repairs which were done to her had made her as good as a new ship, if not better. If they had had the intention imputed to them here, they would have taken some crazy old vessel—any thing rather than the Dryad. And if my friend, because one of the pumps is choked up, is to argue that that is an indication of an intention to cast the ship away; surely I have a right to say that, with such a ship as this, the captain might well be indifferent not only whether there were three pumps on board which would work, but whether there was a pump at all, knowing as he did that she was a perfect vessel.

Well, Gentlemen, the vessel gets out of the channel, and they unreeve the tackle from the long boat. They go on to Anagada, and then we are to be charged with an intention to cast her away there. Now it is an odd circumstance certainly, and one

which you will not fail to carry in your minds, that throughout the whole of this investigation they have not proved a single order given by the captain, or the presence even of the captain on deck, except when the ship ran flatly upon the reef at Santa Cruz. They were at Anagada upon a reef. Where was the captain? In bed. The wind required the course of the vessel to be changed. The captain is in bed. Is he to be responsible if they steer for the reef? Schultz was steering at the time, and my friend will say, I suppose, (though nobody else will I am sure) that Schultz is an honest man. Well. The mate runs down to the captain and says, "We are on a reef." The mate saw it four or five miles a-head. Instantly the captain comes up. The mate had previously given an order to Schultz to put down the helm, and the captain damned him, as he was bound to do (of course I do not mean to say he was bound to use that expression), for putting her round without shifting the studding sails. He said, "Why do you put the ship round before you take down the studding sails?" My friend of course tried to get rid of the effect of that, by asking one of the witnesses, "Would you not rather have your studding sails carried away, or your main sail even, than run upon a reef?" Of course the answer was "Yes." But then you must be aware that you are going upon a reef—and what says the captain as to that? Why when the crew call out that they are upon a reef, he says, "I did not know we were so near." The reef has been seen four or five miles off. The captain is called, and comes on deck. He finds the man at the helm putting the vessel round, and fearing, as he had reason to fear, that the studding sail yards would be carried away, he says "What right have you to put the ship round, without first taking the studding sail down?—go about your business and take down the studding sail, and then you may put the vessel round." Happily, she did come round; and then, when all is over he says, "I did not think she was so near." When she got there, however, the captain was in bed. His, was not the hand that directed the ship's course to that place; and do not tell me that ten men on board a ship, believing that it is the intention of the captain to cast that ship away, would go on in that course which the captain directed them to take, with death staring them in the face, merely because he gave them no negative orders not to go in such a course as should subject the vessel to danger. I think you will be of opinion, that, that which

occurred at Anagada is what might have occurred, I will venture to say, to any other vessel sailing in those seas. The man at the helm is putting the vessel round with the studding sail set. The captain finds fault with him for so doing, and he would have been perfectly right in that, except that it turned out (though he did not know it at the time) that the reef was nearer than he supposed. Rather than run the risk of being run upon a rock, of course you would suffer every thing to be carried away. But the captain said he did not know she was so near, and you can have no doubt that that was the fact.

Well, Gentlemen, they go on and get to the Silver Bank. Now you see forty miles is the distance between St. Domingo and the Silver Bank. There was no chronometer, says my friend. Therefore they could only have kept an account by dead reckoning. They struck upon the end of the Silver Bank, so that almost an inexpressible proportion of a degree would have made all the difference. But what happened at that time? The captain was not steering the vessel—he was not on deck—he gave no orders as they were going on. They saw that there was a rock, which was indicated by the discoloration of the water; and the mate says he saw the rock jutting above the water. The captain was called up. He came on deck—looked through a telescope, and said he could not see it. Did the crew remonstrate, and say, "Why there it is, plain enough to be seen by the naked eye?" But the captain could not see it, and thought, no doubt, that the crew were mistaken; for, at sea, how often does it happen that a man fancies he sees that which is not visible to others! But so instantaneous is it, that the man in the fore-yard cries out, "There are but four feet water under her stem!" and immediately the vessel strikes upon a rock. It all happens in a moment. She drags off, however, and the rudder is unshipped. Now, how did the ship get there. It is manifest that she did not get there by his order, or by his steering, for he was down below at the time. But then it is made a matter of serious complaint against him—that, having unshipped the rudder, he did not give up his boom (which is, I believe, attached to the mainsail) or his spritsail yard, for the purpose of making a jury rudder; but that he gave the carpenter (and I beg you to observe what, according to the evidence, the jury rudder was made of), among other things, the oars of the long-boat.

Lord Chief Justice Tindal. No; one old oar.

Mr. Jervis. I speak, of course, under my Lord's direction. Gentlemen, I say that it would have been a piece of great imprudence if he had given up the boom for any such purpose. The witness said, I believe, that he used the hencoop and some of the long-boat oars. Now, if he did use the boat oars of the long-boat, either one or more of them, how does that tally with the pretence of my friend, that the long-boat was taken the greatest care of, because it was the only thing that the captain looked to to escape in.

Mr. Clarkson. They had plenty of oars.

Mr. Jervis. My friend says they had plenty of oars; one of the grounds of complaint being that the ship was insufficiently found in every thing. If the long-boat was the means of safety and escape, to which the captain looked, it is odd that he should have allowed the jury rudder to be made of the oars. It seems to me, Gentlemen, that if, after the fallacy of the mate's dead reckoning had been shown, the captain had, with an imperfect rudder, gone into the open sea, and if there had been a claim upon the policy, upon the loss of the vessel, under such circumstances there would have been ground for doubting whether the party insured could recover. You are certain to keep your reckoning correctly, if you are near the land, so as to judge of your latitude and longitude; and therefore the captain did hug the land, which my friend says he ought not to have done. And, Gentlemen, the result proved that he was right; for they do not pretend, that, under his skilful management, the vessel did not thread through all those reefs of rocks until she got to the reef at Hayti, to which I will now call your attention.

Now, Gentlemen, I come to the reef at Hayti. It is pretended that he must have intended to lose the ship, because he did not run into the port of Hayti that night. The mate says that he and Davis, and Schultz, the carpenter, were consulted, and concurred with the captain in the opinion which he formed. Schultz said that he advised him to go out to sea.

Mr. Clarkson. If he could not go in.

Mr. Jervis. Now I ask whether the captain was not right in not going in that night? He had broken the straps of his jury rudder. The Bencoolen was there with a rudder. Captain Tait, the captain of the Bencoolen, did not think fit to go in himself that night; but preferred beating about till the next morning. And why? Because he wanted a pilot. Was not Captain Loose right (he having his jury rudder unshipped) in

doing the same thing? And, if the mate was wrong in this, he might be wrong in other matters. It is plain, therefore, that not only the conduct but the testimony of Captain Tait confirms Captain Loose, and shows that he was right in not going into the port that night. Well, he goes out to sea, and beats about till morning; and, in the morning, the Bencoolen is seen. The captain of the Bencoolen says he saw that the Dryad was in danger, and fired a gun as a signal. But then, you will recollect, that I asked him, whether at sea it is not very usual to fire a gun as a signal for a pilot?—upon which Captain Tait popped out upon me, "Aye; but I had a pilot at that time on board." And my friend, the Attorney General, laughed at that, as if he thought it was an answer to my question, though, in point of fact, it was not; for, Captain Loose knowing that it was a usual thing to fire a gun as a signal for a pilot—being in his cabin—not knowing that he was in any danger—and not knowing whether the Bencoolen had got a pilot on board or not, had a right to believe that the gun was fired as a signal for a pilot. If a gun never were fired at all, except as a signal to warn people of danger, then there might be something in it; but if it be usual to fire a gun as a signal for the pilot, what signifies it to me or to Captain Loose whether a pilot was on board the Bencoolen or not; and had not Captain Loose a right to say as he did say to the mate, "What is that to me?" Had he not a right to expect that the gun was fired by the captain of the Bencoolen to attract the attention of the people on land, in order that they might send out a pilot to take him into port?

Now, Gentlemen, let us see what was done. It was almost a dead calm. It must have been—for, about daylight, they were only two or three miles from the reef, and they did not reach it for a long time afterwards; and, although Captain Tait says he had steerage way, the mate was not asked whether there was steerage way on the brig Dryad; and, as you know, you cannot steer so well with a jury rudder as you would with a rudder of an ordinary description. She is there lying still, or nearly so. To have anchored (says Captain Tait) would have been bad. Going to sea would have been useless; because there was no immediate danger from the reef. There she lay, and there she had been lying in a dead calm, within sight of the port of Hayti, and necessarily seen from the town.

Now, Gentlemen, let me ask this question. Three pilots, they say, came out. One, I suppose, was to row the boat, another

was to be left in the Bencoolen, and one was for the Dryad. If the Dryad was in such imminent danger as Captain Tait says she was, and as Maxwell, the mate, would have you believe she was, why, in the name of common sense, did not the pilot go at once to the Dryad? If Captain Loose had intended to lose this ship, do you believe that, of all places in the world, he would have chosen a place opposite to the Port of Hayti, and in the immediate neighbourhood of a ship, the captain of which had, as his mate had told him, fired a gun and hoisted a union jack, which let them know she was an English ship, and which they at first believed to be a man of war? Would it not have been madness in him to do anything of the kind there? for detection and punishment would have been the certain consequences? My friend says, it is plain that the captain intended to lose the ship there. I say it is impossible to believe that he had any such intention. The circumstances do not show it, and I am satisfied that you will not arrive at that conclusion. But if he had intended to lose the ship, can you believe that, when they got into the port—when three of the crew were taken into custody, and when all seemed to be dissatisfied, they would not have made the charge against the captain, and that they would not have had the matter put into a train of investigation in order that they might be liberated? And when my friend says it was difficult at the Port of Hayti to get sailors, and that, therefore, the captain was obliged to keep his own seamen—hostile though they were—the answer I make is, that it appears from Captain Tait's evidence, that there were plenty of idlers and skulkers there, and those were the very men of all others who would have best suited the captain's purpose. They were the very men Captain Loose wanted, according to the case of my friend, and yet he prevents his own men from leaving the ship, knowing that he was not likely to meet with any favour at their hands.

Then, Gentlemen, they go to Cape Cruz. They take a course along the shore. You cannot rely certainly upon any statement as to the exact course they took, for Schultz says they kept no reckoning, but at night, the ship having escaped all the rocks and all the dangers to which she had been exposed in the day-time, Captain Loose being on deck, as he was well required to be, in consequence of the absence of Maxwell, who had left the ship, they run on a reef, which Schultz says, they had not seen before. Why, Gentlemen, the most cautious

man in the world might have done it. It is a reef, running out from the promontory there; and the accident might have happened to anybody. Now, what occurred there, is most important. If you believe Schultz's evidence—if you believe that the captain made the hole, which the witness describes as having been big enough to let himself through, in a three feet plank, and if you believe (as I shall show you, I think you scarcely *can* believe) that when the vessel was hard and fast, stem and stern in twelve feet of water, they fished a cigar box from the bottom of the water at the depth of thirty-six feet, and found some of the leaves of the log book, and certain letters belonging to the captain,—then, I admit, that would be a strong circumstance to induce you to believe, that Captain Loose was guilty of that which is imputed to him. But, I think, I shall be able to show you that it cannot be so. Now, first of all, with regard to the cigar box. What is the allegation as to that? It is, that the captain having in his possession certain papers, and a portion of the log book, which he thought might be prejudicial to him, or to his owners, if they were discovered, put them together into a cigar box, and threw them over-board. Now, that assumes either that he received letters during the voyage (which is impossible, because, upon the evidence of Maxwell, he never touched anywhere but at Cape Hayti, where it was not his intention to go), or else that he, coming out with an intention to destroy the ship, brought out with him from England that, which, if seen, would prove the fraud to which he had been a party. He must either have received letters from a post-office in the middle of the sea, or else he must have brought them with him from England; and, Gentlemen, it assumes this also, that intending to lose the ship, he had written in the log book a real account of his proceedings, and had afterwards torn them out to avoid detection. If he had intended to lose the ship, he would have taken care to make his log book perfect, and if for the purpose of avoiding detection, he had desired to destroy these papers, would he have thrown them into clear and shallow water, where they would certainly be seen and could be easily got at? Not to mention the means of destruction which a fire or a candle afforded, he had the ready means of taking them on shore in his pocket, and destroying them there; instead of which, according to the testimony of this man, Schultz, he was incautious and foolish enough to throw them out of his cabin window into the sea. But, Gentlemen, where did Schultz find them?

It was on the third or fourth day, as they were going round the ship in the jolly boat, that they found this cigar box. They came round to the stern of the vessel, and saw a cigar box lying at the bottom of the water—six fathom deep. That you know, is thirty-six feet—a pretty long oar they must have had to get it up! But is it likely, or is it not rather that which we very often see, that this man is determined to come and prove, that which he has made up his mind to prove, and having no real facts to establish, states something which occurs to his low and vulgar mind, and which he thinks will give his story confirmation and reality, though when it comes to be examined the falsehood of it is apparent? If Captain Loose was the cunning rogue they would have you believe him to have been, would he not have taken these papers with him to land, instead of putting them into a cigar box, and throwing that box thirty-six feet down into the sea; and, I would ask, whether at that depth it is possible that this man could have seen it at all, or if they could have seen it, do you think it likely, that they would have been able to fish it up, as they say they did?

Then, Gentlemen, you are told that while the captain is away, the ship is pumped, and she is found to be dry. He comes back to the ship, and asks whether she has been pumped lately. He is told that she has been pumped about three hours before, and then he desires that she may be pumped again. That is done, and water to the depth of five feet is found in the hold, and a hole is also found in the cabin, which the witness describes as being two feet and a half wide, and which he (being himself a carpenter), says he could not make, with all his tools, in less than two hours. I ask you, therefore, is it possible to believe that that hole could have been cut by the captain—without tools and without noise—for the crew were all over the vessel, and if he had done it, they could not have failed to hear what he was about? Can you believe that it was done by him, when you are told that the carpenter himself could not have done it, with all his tools, in less than two hours, if he could have done it within that time?

Well, Gentlemen, they leave the vessel at last, and go to Falmouth, in Jamaica, and there the protest is taken. And now, Gentlemen, I must read that protest to you which was sworn, you will recollect, not only by the captain, but which also has attached to it the name of Mr. Schultz.

Now, Gentlemen, you know, and we all know, that at Jamaica there are English authorities, English agents, and English

magistrates. You know also that the captain of a ship is bound to make a protest of what occurs, in order that it may be given to the insurance offices for their satisfaction. You know also how easy it is to take the thread of a true story—to exaggerate it from time to time—and then from that, to make out a statement, which is untrue in fact, but which shall have the appearance of truth. Now I ask you to take the statement which the captain swore to, and which Schultz also swore to (selling his soul, as he tells you, for 4*l.* 11*s.* 3*d.*), and say whether it does not correspond exactly with every thing that really occurred, except in so far as it has been exaggerated and coloured, for the purposes of this case—" Edmund Loose, master of the late brig Dryad, of London, being duly sworn, maketh oath and saith, that he sailed from Liverpool, Great Britain, in the month of September last, with a cargo of plantation stores and implements, salt, &c., bound for Santa Cruz, in the island of Cuba—that, after a voyage of forty-five days, nothing material occurred until Saturday, the 19th October, as appears by the following extract from the log-book now produced:—' Remarks on Saturday the 19th.—P.M. Moderate breezes and clear weather—employed repairing the main trusses and other necessaries—carpenter repairing the fore scuttle—at 4 do. weather—at 7, heavy showers of rain—throughout the night, cloudy, with vivid lightning—at day-light, clear—at 7 h. 15 m. A.M., observed a rock on the larboard bow, distant about three hundred yards—immediately saw several others a-head, and on the starboard bow—the water being quite smooth—the sea did not break on them, although some of them almost level with the surface—before the ship's position could be changed, she struck and stuck fast—in about five minutes she began to drag off, but hung by the stern—wore off, and carried away two of the rudder pintels, when the rudder unshipped, and she dragged off before the wind, and got over the reef after touching several times—pumps sounded—making no water—trimmed sails to steer herself by the wind—moonlight, wind, and clear—lat. 26, 33, north—long. 68, 58, west.—Sunday, October 20th, carpenter employed making a jury rudder out of spare top gallant mast, lower boom, long boat oars, and planks—pumps regularly sounded—making no water—at 5, showery, with thunder and lightning—shipped the jury rudder, which, with the trimming of the sails, enabled her to be kept off the wind, to endeavour to make some port in the west-end of St. Domingo, weather permitting—at 8, heavy rains—throughout

the night cloudy, with rain at times—at day light, saw the island of St. Domingo, bearing north-west to south south-east—8, light winds and clear weather—noon, with Cape Isabellica bearing west half south—Old Cape Francois south-east half south—Cabron south-east by east—Monday, October 21st, stood along the land having to vary and trim the sails so as to steer her—the jury rudder being of very little use to her—Cape Isabellica bearing west half south.—Tuesday, 22nd October—midnight clear and cloudy—soundings from 13 to 5½ fathoms off point Grange—saw a brig at anchor at Monte Christa—at 8 passed among the Seven Brothers—sounded over the bank in about 9½ and 10 fathoms—passed one rock with only three fathoms, close to it was 9½—Wednesday, 23rd October, P. M., light rains and clear weather—the jack flying for a pilot to conduct her into Hayti—got 45 fathoms of each chain on deck and the anchors off La Guiera—at 4 squally with heavy rains—carried away the straps of the jury rudder and paid off head on the reef before she came up with the sails—the breakers were within 100 yards—filled the head yards on the starboard tack—backed the main yard—got the rudder and stem post on board, and put more straps on it—shipped it and fitted on her and reached to the north-eastward at 9—saw a large ship on the lee beam—midnight moderate breezes and cloudy—wore to the south-ward at daylight, point Picolet bearing west—8, light airs and clear, the ship to leeward, under English colours, 11h. 30m.—boarded a Hayti pilot—point Picolet bearing west south-west, moonlight—airs and clear—steering for the port.—Wednesday, October 23rd—standing for the entrance of the harbour—at 3 wore close to the port, and stood up the bay—at 3 anchored with the larboard anchor and 20 fathoms of chain in 8 fathoms of water opposite the city of Hayti, the port became north half west.—Tuesday, the 5th of November—left the harbour of Hayti on her voyage to Santa Cruz.—Saturday, November the 9th, strong breezes and hazy at 4—Peak of Turguinous north-west.—At 6 Cape Cruz west by north—about ten miles—at midnight strong breezes and cloudy—at 2 fresh gales and thick—at 3 struck on a reef and made water, out boats, and used all possible exertions to get the vessel off, but no use, she being in a hole surrounded by reefs and making water fast—striking very heavy.' Further, this deponent swears that the following day the ship continued striking heavy and making a deal of water. On Monday, the 11th of November, the ship

went down by the stern, having bilged; and the following day, finding that all assistance from the shore was impracticable, as the coast was uninhabited, and having made an attempt to proceed by land to Menzinella, thought it advisable for the preservation of the lives of the crew to make the nearest port. Left the ship on Tuesday, the 12th of November, accompanied by the following—David Davis, mate; Benjamin Schultz, carpenter; Henry Simpson, John Fitzpatrick, seamen; and Stephen Witridge, a boy—in the long boat, and four day's provisions, which was all that could be saved from the wreck, and after experiencing heavy gales of winds from E. S. E., arrived on Friday, the 16th of November, at Falmouth, in the island of Jamaica. On arrival, waited on the agent for Lloyd's for assistance, and on his refusing to give any, immediately noted this protest according to law. Thus done and protested at the port of Falmouth, in the island of Jamaica, this 15th November, 1839." That is signed "Edmund Loose." Then, Gentlemen, this follows—"The foregoing statement of Captain Edmund Loose, late master of the brig Dryad, of London, is substantially correct and true." That is sworn the same day, the 15th of November, 1839, and it is signed "Benjamin Schultz," the witness who has sworn the contrary before you now. I could not ask the witness, nor could I state to you whether any others of the crew swore to the same effect, but this you do know, for the witness proved it himself, that Davis, Simpson, Fitzpatrick and Witridge stood by while he swore it. I have read to you the oath which he took at Jamaica, and after swearing that, I need not ask you what value you set upon the evidence which he has given before you to-day. He has had the impudence to tell you upon his oath that the captain owed him 4*l.* 11*s.* 3*d.*—that, in order to get paid that sum, he sold his soul for ever, and that, after he had done it, the master, who had thus made him perjure himself, was so reckless and so bold that he set him at defiance by refusing to pay him that which he owed him, and the payment of which he had promised him. And yet this coward, who had sold his soul for money, had not the courage to go to the authorities on the spot and openly to declare the guilt of the captain, but went about to other places and finally came to England, waiting probably till there was something to be got out of this transaction; and if he swore one way for 4*l.* 11*s.* 3*d.*,—5*l.* you may be sure would be a sufficient temptation to make him swear the other. Can you rely upon the evidence given by that man, upon whose evidence

alone the case rests, and who, without any adequate motive, swore one way while Loose was alive, and who, now that he is dead, swears the other, when he has the case of a powerful company to support by his testimony? I impute nothing improper to them. Gentlemen, I hope that they are above suspicion. All that I mean to say is, that his expectations probably are commensurate with their wealth, and that in the hope of gain he has sworn to-day that which is false, having before sworn the direct contrary; and yet this is the man upon whose evidence (for shut out his evidence, and you have nothing to prove that the ship was cast away) my friend asks a jury of Englishmen to convict Mr. Michael Wallace of a felony which, until lately, was capital—this very man having sworn, though he says falsely before, that the captain was altogether innocent. Can you rely upon any thing that he says? Dismiss his evidence, and there is no case. The question is, is he confirmed? My friend says he is—how is he confirmed? There is no evidence but his, as to what occurred at the time the vessel was lost. Does the previous conduct of the captain tend to confirm him? I have shown you, I hope, how all that occurred previous to the loss of the vessel may have been consistent with the most perfect innocence. To talk of the evidence of Schultz agreeing with that previously given by Maxwell is absurd, for he was sitting in court all the time and heard the story which Maxwell told. He has been rogue and villain enough to sell his soul for money—doubt you that he has cunning enough to make his story consistent? Upon the evidence of Schultz therefore—that self-convicted perjurer—I am sure you will not dare to act. Exclude his evidence, and there is no case at all.

Gentlemen, that circumstances of suspicion may exist in this case I am not here to deny; but suspicion alone you cannot act on. Before you can pronounce Mr. Michael Wallace guilty of this felony, you must have conclusive evidence of the wilful loss of the ship by stranding; which, without the evidence of Schultz, you have not. You must be thoroughly satisfied and convinced that Loose did intentionally cast away the vessel, and you must also find (that which I think there is no evidence to establish to your satisfaction, free from all doubt—for that is the true principle of the English law, and that is the protection which it affords to the accused), that even if Loose were guilty, Michael Wallace has been guilty also. You are called upon to come to that conclusion from the fact of his having insured this ship, not

excessively beyond its value, as I have shown you, from the fact of his having insured the freight, as he might be well warranted in doing under the circumstances I have mentioned to you, and from the fact of his insuring one parcel of goods personally, and one parcel only, which goods might well have got on board without their being taken notice of by those who had freighted the vessel.

Gentlemen, I beg your pardon, and that of my Lord, for the length of time which I have occupied in my address to you. I have felt it my duty to go minutely through all the circumstances of the case. I hope I have not done so unfairly or intemperately. My object has been to assist you in the administration of justice, and I trust that my observations have met your concurrence as men of sense and experience. If I have failed in that, I shall feel that I have not done my duty.

SUMMING UP.

Lord Chief Justice Tindal. Gentlemen of the Jury, — The prisoner at the bar, Michael Shaw Stewart Wallace, is indicted for a felony—a felony which is no longer capital, but which is certainly attended with very serious consequences to any party found guilty of the offence imputed to him. You will, therefore, upon the present occasion, bestow, as I am sure you have hitherto done, your earnest and zealous attention to the evidence brought before you.

Gentlemen, the felony with which he is charged is, that he incited and procured a person named Edmund Loose, the captain of a ship called the Dryad, wilfully to cast that vessel away, with intent to defraud the part owners of that vessel, or certain persons who had effected insurances, whose names are mentioned in the different counts of the indictment. It would rather embarrass than make the matter clear to you if I were to state each count separately. It is sufficient to say, that that is the substance of the charge.

The case, Gentlemen, will branch itself into three different points:—First, that the captain, Edmund Loose, wilfully cast away this vessel upon the occasion in question; Secondly, was

he induced to do that by a wicked design, to defraud either the part-owners of the vessel or the underwriters? and, the third point for you to consider, and that which constitutes the ground of charge against the prisoner at the bar, is, did he (the prisoner) with the same intention, and with the same wicked design, incite and procure the captain to commit that felony?

Formerly, Gentlemen, before the late statute, the charge against the prisoner would have been that he was an accessory to a felony committed by the captain, and he could not have been put upon his trial upon that charge until after the trial and conviction of the principal. But, by a statute passed in the reign of George IV., it is made a substantive ground of charge against another person, without first finding the guilt of the principal, that he does incite another to commit a felony. Still, however, in the investigation of the case, and for the purpose of determining whether the prisoner is guilty of the charge or not, you must be satisfied of that which is the basis and substratum of the whole—that the captain, if he had been put upon his trial, must have been found guilty of the felony of wilfully destroying this ship with the fraudulent motive imputed to him.

Now, Gentlemen, it appears that the ship in question, the Dryad, was chartered on the 25th of July 1839, to merchants at Liverpool, carrying on business under the name of Zulueta & Co. She was chartered on a voyage from Liverpool to Santa Cruz, in the island of Cuba, and there was to be put on board, by these merchants, any cargo that they thought fit to send, not exceeding the quantity she could conveniently carry; and the remuneration that the owners were to receive was the sum of 300*l.* called in the charter itself a lump freight—that is without entering with particularity, into the different component parts of the cargo, or by taking it by time or in any other way; a sum of 300*l.* was to be paid for the use that Zulueta and Co. were to make of the vessel.

Now Gentlemen, what is imputed is, that from the time that Captain Loose commenced loading this vessel for the interest of his owners at Liverpool, down to the period of time when the ship was lost, as certainly she was, off Cape Cruz, in the island of Cuba, he had a design which at last he carried into effect, of destroying this ship.

Gentlemen, the ship sailed somewhere about the 7th of September, having taken on board such a cargo as was thought fit by Zulueta and Co., who had freighted her for the voyage,

and you will find that the first remarkable attempt, as it is called, on the part of the captain, to destroy the vessel, is when they reach the first of the Virgin Islands, in the West Indies, at a small island called Anagada. Having escaped, however, at that place, the captain is charged with having, a short time afterwards, again attempted to destroy the vessel by running her on a reef called the Silver Key, and then it is said, that having got off that reef also, and being prevented from carrying the design he had in his mind into execution, he made a third attempt close to a reef of rocks near to Cape Hayti, and lastly it is said, that having been carried into harbour (as it would seem, according to some of the evidence, against his intentions) and the vessel having been repaired there, he sailed again and took a wrong course, as it is stated by the witnesses on the part of the prosecution, till he came upon a reef of rocks off a cape, called Cape Cruz, in the island of Cuba, where he abandoned the ship, and where she was left in a state of destruction. That, Gentlemen, is an outline of the charge made against the captain.

Now, Gentlemen, it is impossible to suppose that a captain would wilfully destroy a ship entrusted to his charge, unless some sinister and wicked motive could be imputed to him. Nobody would for a moment suppose that he would endanger his own life, and that of the crew under his command, unless he had some design to better himself, or of reaping a profit in some way or other from such an act of wickedness; and the motive which you are desired to attribute to him, and the inference you are asked to draw from the facts before you, are, that there must have been some secret understanding between him and the prisoner at the bar, and another person not now before you, namely, Patrick Wallace, the brother of the prisoner, that the ship should have insurances effected upon her very much beyond her real value, and also that insurances should be effected upon goods that were not to be put on board the ship at all—that for the purpose of enabling them to reap a profit from these fraudulent insurances, the captain made himself the tool of the prisoner at the bar, and of his brother, or of one of them to effect this act of destruction—and that there was some secret understanding between them, that he was to be benefited by that, which if carried into effect, as I have stated, would produce a very large profit to the prisoner at the bar.

That, Gentlemen, is an outline of the charge against the prisoner. You will have to say, whether, looking at all the

evidence in the case, you are satisfied that such charge has been made out, and that the inference, which you are asked to draw from the testimony which has been laid before you, is a just and necessary one.

I should observe to you, Gentlemen, and, perhaps, I may do so more than once before I conclude the observations which I have to make upon the case, that if there really exists in your minds a fair and reasonable ground of doubt that the prosecutors have made out their case, it will be your duty to give the prisoner the benefit of that doubt, because the prosecutors have to satisfy you, the Jury, that they have clearly substantiated the charge which they have brought forward.

Now, Gentlemen, let us see what evidence has been laid before you in order to make out the charge against the captain, for, unless the guilt of the captain is established, there is no ground for charging the prisoner. If the captain is not shown to have been guilty of the direct and principal felony alleged on the face of the indictment, it is needless to say that the prisoner cannot be convicted of inciting and procuring him to commit that felony. If the offence itself has not been committed, there is an end of the procurement to commit it.

Let us see, therefore, Gentlemen, the motive imputed to the captain, and the state of the vessel as to insurances at the time she sailed, in order that we may be able to appreciate the value of the evidence when I bring it again to your recollection. It appears, as I before stated, that the ship sailed out of dock on the 6th or 7th of September. Just before the time she sailed, and I believe on the very day, Zulueta and Co. did that which every prudent merchant would do, insured their cargo at Lloyd's in the sum of 3000*l.*, the articles constituting that cargo being specifically enumerated, and the value of them being stated. At the same time, the prisoner at the bar did that which was perfectly prudent and perfectly justifiable. He himself was owner of three-fourths of the ship—the owners of the other fourth were Messrs. Howden and Ainslie. Before the ship sails, he writes to Howden and Ainslie, he himself, being the ship's husband and the person usually managing and conducting the ship, to effect an insurance on the ship for 2000*l.* and on the freight, which, as I before told you, was a lump sum of 300*l.* Nothing could be more proper or regular than that. Howden and Ainslie are not only ship-owners, but they are also insurance-brokers; and they

immediately on receiving this intimation effected the policy on the ship with the Marine Insurance Company, and effected also a policy on the chartered freight for 300*l.* at Lloyd's. Therefore, you have, at the time the ship sailed, three policies effected, which it is only necessary to mention for the purpose of removing them out of the case—namely, one on Zulueta's policy for 3000*l.*; Michael Wallace's policy for 2000*l.* upon the body of the ship, and also the policy upon the chartered freight which was insured at 300*l.*, not at all exceeding, any of them, the just value of the subject-matter of insurance; for, it has been stated in evidence before us, that the value of the vessel at that time was 2000*l.*, or it might be a few hundreds exceeding that sum, 300*l.* being the precise sum mentioned in the charter-party.

But, Gentlemen, at the time the ship sailed, there were various other policies that were effected, and it is to them that your attention must now be directed. It appears by a letter written by the prisoner at the bar, that he left London on the evening of 10th of August, and went down to Liverpool; and we have had a second letter given in evidence, dated at Liverpool, on the 14th of August, in which he writes up to some of the brokers, giving them directions about effecting policies in London. He went to Liverpool, therefore, on the 10th of August, and whether he remained there all the time, down to the time when the ship sailed, or not, does not exactly appear. Most likely he was there the greater part of the time, as the ship was about to sail to a foreign country; as it was said, he was anxious to secure a freight home, which does not appear to have been obtained.

Now, matters remaining so, Zulueta and Co. began to put their cargo on board about the end of August, and they completed the loading of their goods on the 6th of September. Entries are made from time to time by the clerk of Zulueta and Co., as the various articles are put on board; and, on the last day, there is a declaration delivered in to the Custom House by the master, comprehending and confining itself at the same time to the very articles that are shipped on board by Zulueta and Co. But, before the ship sailed, these other policies, to which I will now call your attention, were effected, the greater part of them by Patrick, the brother who was remaining in London, but partly by the direction of the prisoner at the bar himself.

Gentlemen, with respect to those policies which were effected in London by Patrick, I ought to observe to you, and you will

bear that observation in your minds, that the prisoner at the bar cannot be made liable for any act done by his brother, unless you are satisfied, looking at the whole of this case, that the brother was authorised to act for him as his agent in effecting such policies; and you will endeavour to see that you rest any inference of that sort on a sound and just foundation, by considering whether there is brought home to you any act of authority given by the prisoner at the bar to his brother, in any particular case; or, whether the monies, the produce of these insurances so effected by Patrick, have been actually shewn to have reached the hands of the prisoner at the bar; because, if the brother in London, who, up to some extent at least, is shown to have been the agent of the prisoner, effects policies on which the prisoner receives the amount, or part of the amount insured under a claim for a total loss, it would not be an unjust inference, but one which you would be fully warranted in drawing, that the one was acting under the authority of the other.

Now, Gentlemen, the policies effected, besides those to which I have already called your attention, are, in all, seven in number. I will first notice those on which less reliance is placed, on the part of the prosecution, and then I will call your attention to the three on which the prosecutors desire that you should draw an inference unfavourable to the prisoner.

Gentlemen, it appears, that with the Neptune Office there was a policy effected in the name of Michael, on the ship and outfit, valuing them both at 2700*l.*, that policy being for 700*l.*

Then, Gentlemen, there was another policy effected in the Neptune for Michael, on the chartered freight, valued at 700*l.*

Then there was a third policy effected in the name of Michael, on freight, with the Indemnity Mutual Marine Company in the sum of 600*l.*

And then there is, lastly, one effected at Liverpool just before the ship sailed, with the Ocean Company, a company established, I believe, at Liverpool, on the ship in the sum of 500*l.*, those four together making up a sum of 2500*l.*

Then, Gentlemen, besides those, there are three other policies effected on certain specified goods; and in directing your attention to the charge made in the first instance against the captain, which is, as I have before stated, the substratum of that which is made against the prisoner at the bar, it will be very important for you to consider, whether these goods, which are here specified in these policies, and which are also included in the

bills of lading signed by the captain, were actually put on board this vessel or not.

Now, Gentlemen, of these three policies one is effected in the Alliance Company, in the name of Michael, on the goods specified therein, which are—"Six cases of flannel, each containing forty pieces—240 pieces." Then, "Two cases of cloth, each containing ten pieces, and each piece containing fifteen yards." That is, 300 yards of cloth, and also two cases, containing fifty pieces of printed cotton, amounting, according to the valuation, to the sum of 715*l.*

The next policy is effected, in the name of Patrick, with the General Maritime Assurance Company. That is a policy also upon goods which are specified in the policy. They consist of thirty-nine tierces of beef, fifty-two barrels of pork, thirty-eight firkins of butter, thirty-five crates of earthenware, seven cases of cotton prints, and five bales of blankets, and the value of those goods, so stated to have been put on board and mentioned in the policy, is 1264*l.* 12*s.*, the policy being effected for 1265*l.*

Then, Gentlemen, comes the last policy, which, again, is effected with the Neptune Company, in the joint names of the prisoner at the bar, and his brother Patrick, for 687*l.* That is also on goods which are mentioned in the body of the policy, those goods being thirty tierces of beef, forty-three barrels of pork, thirty-five firkins of butter, and fifty crates of earthenware, the value of which is stated to be 687*l.*

Now, Gentlemen, it is not only with reference to the first four policies that I have mentioned to you, but it is also and principally upon the score of these three latter insurances, which state specific articles to have been put on board the ship, that your answer is required as to whether this was an act done unfairly by the captain with a view to defraud the underwriters, set on foot or prompted by the prisoner at the bar, with the same object.

Gentlemen, there is no doubt whatever but that the three bills of lading which are the subject matter, and the groundwork of the three latter policies, were all signed by the captain. We have had the bills of lading produced, and you shall look at them yourselves if necessary. They are drawn up from an account that was given by Patrick, not by Michael, and they are signed by Captain Loose, who was the captain of the ship, and, therefore, it is certainly a most important point, and one

on which the issue of this prosecution must, I believe, mainly depend, whether you are satisfied that those goods were ever on board the ship at all, because, in the first place, one cannot on any reasonable ground suppose, that a captain would sign bills of lading with respect to goods not on board, except for some sinister purpose. Why should a captain put his name to an instrument which would make him liable for the safe carriage of certain goods, if those goods were never put under his care at all? You cannot on any reasonable ground, or upon any fair and ordinary course of dealing that occurs in the business of life, suppose that such a transaction should take place—that is, that a man should voluntarily make himself liable for the transportation beyond the seas of a certain cargo, and at the end of the voyage be obliged to pay the value of that cargo in case of its non-production, unless he had the cargo under his care at the time,—therefore, it is a most important point to see, whether, according to the testimony of some of these witnesses, no part of the goods were ever put on board at all, or whether the observations which have been addressed to you by the learned counsel, who has defended the prisoner, are well founded or not when he says, that, as to two of the policies, the prisoner is not at all connected with them, and that as to the third there is every reason to believe that the specific articles enumerated in the policy were actually put on board this vessel.

Gentlemen, the next point—and it is also one which immediately affects the prisoner at the bar—is whether he was at all concerned, either with the captain, or with anybody else, or alone, in effecting these insurances for the purpose of defrauding the underwriters.

Now the observation which I made to you as to the improbability of a captain, with any fair motive, signing a bill of lading with respect to goods not on board the ship, applies equally to the case of a person who insures those goods. Nobody can insure goods which are non-existent and which are not subject to the risk he insures against, with any just or fair ground of excuse. Why should he do it if he has not the goods? If the ship arrives safely at her destined port, then he loses, of course, the premiums he has given to the underwriters, the commission that is charged by the broker, and other charges. If, on the other hand, the ship is lost, he cannot recover the value of the goods insured, because they were not on board, and were not in fact

lost. No person in his sober senses could effect policies of insurance upon which considerable premiums have to be paid, with any fair or just reason or ground, unless the goods so insured were really existing on board the ship at the time; and, therefore, if you are satisfied that these policies were effected with the knowledge of the prisoner at the bar, for his use, and by a person who was his agent, it is a most important point in considering the question of his guilt or innocence, to ascertain whether the goods were really existing and put on board or not. I cannot help observing that with respect to these goods which are specified with so much minuteness and particularity, that no evidence whatever has been offered, on the part of the prisoner at the bar in his defence, to show you that there were such goods at any time whatever consigned to him, or that he was ever in possession of them. And although I agree in the observation of the learned counsel, that the absence of any evidence produced by the prisoner is not a sufficient ground on which you should come to the conclusion that the charge which is here made is well founded—yet where a person is put in considerable hazard and where (if his case be a true one) he must have the means in his power, with no great difficulty, of bringing forward positive evidence which would set the matter at rest, it is at least a subject of observation that no such evidence has been brought forward. It is impossible for the prosecutors to know of whom these goods were really bought. They have no means of knowing what had been passing in the private concerns of the person who has effected the insurances. He must know very well whether he purchased these different articles, and he must have purchased them, one would have supposed, shortly before the time when the ship sailed. However that is left, upon the evidence before you, a complete blank. I do not urge this to you as by any means sufficient of itself to constitute a charge against the prisoner, for if I did I should be in effect saying that the absence of a defence would in all cases be sufficient to establish the guilt of the party charged. But when you are looking at the whole case, and at the evidence which has been brought forward to establish the case against the prisoner, it would be improper in me to withhold from you that observation, to which, however, you will give no more weight than you think it justly deserves.

Now, Gentlemen, the ship, as I before stated to you, sailed on her voyage, and you have heard the general outline of that

voyage, and the time when she perished, which was about the 10th of November. After the intelligence of her loss arrived in England, application for payment was made, as is usual, by the different brokers who had effected the various policies, to the offices with whom they were effected, and in the course of the month of February the greater part of those offices paid a total loss; part of the money coming, in the first instance, into the hands of Patrick, and part also into the hands of the prisoner at the bar. Although there is no direct proof of the fact, still there is proof to be laid before you, from which you are asked to draw an inference; that with respect to the three policies, in which the goods are specified in the policies, the money paid upon those policies was actually paid at once by the offices to the prisoner at the bar. One of the offices, however, refused to pay a total loss at once. They paid only 80 per cent. in the first instance, and wished for some further investigation to take place; in consequence of which a letter was written to some consul, in the neighbourhood of the place where the vessel was wrecked, in Cuba, asking for further particulars. It seems, however, that none were obtained, and ultimately, the 20 per cent., which was left unpaid in the first instance, followed the fate of the rest. It was paid by the insurance office, and came to the hands either of the prisoner or of his brother.

That, Gentlemen, is the outline of the case, upon which you will have to determine, whether the prisoner is guilty of the charge imputed to him.

I have stated to you, that it is extremely important to ascertain to what extent Patrick is to be considered as the agent of his brother Michael; and with reference to that question, I will state to you what Mr. Frost, who appears to have known them both, states as to their mode of carrying on their business. He says he knew both Michael and Patrick, and also Loose, who had been for three years in the employ of the prisoner, Michael, and he knew him when he was mate to the prisoner at the bar. Then, he says, the prisoner was the agent for the Dryad. When he was at Liverpool, Patrick was in London, and Patrick acted as the agent of the prisoner. Then he says, on his cross-examination —"On two or three occasions Patrick has paid me for his brother, the prisoner. He has paid me for goods supplied to the ship. Loose, the captain is dead." Then he says—"I know they have carried on business together, for I have seen them in Cooper's Row. After the loss I saw them at Crosby Hall Chambers.

It was at that place that I left some letters for Michael, whom I knew before in Cooper's Row. The office in Cooper's Row belonged to Michael, but Patrick did business there. I have known Patrick doing business for Michael, on three or four other occasions on different voyages." Then he goes on to give an account of a bill of exchange, for 400*l.*, with respect to which he says, he accompanied the prisoner to Howden and Ainslie's, on the 30th of July, and left it with him.

Gentlemen, besides that general evidence of agency, you will find that there is a letter written by Michael, in the course of this transaction, in which he gives authority to his brother to receive certain money for him. It is dated 29th of January, 1840, and addressed, I think, to Mr. Hall, the broker, in which he says—"I have to start for Liverpool to-night. When you receive the cash from the Mutual, please to pay it to my brother —his receipt will be sufficient." There, you see, he was allowing his brother Patrick to receive the money, payable on a total loss, in respect of one of these policies, namely that policy for 600*l.* on freight, which was effected for Michael, in the Mutual Marine Company; showing, therefore, that at that time, Patrick was, to a certain extent, acting as the agent of the prisoner at the bar.

Then, Gentlemen, there is another part of the evidence which goes to the same point, and that is the evidence of Stott, who says, "I know the prisoner's brother, Patrick, who dealt in ale and porter and Russian produce, such as bristles, isinglass, and so on. He carried on his business at the same place with his brother, in Cooper's-row. Patrick first lived in Cooper's-row and afterwards in Windsor-terrace. He was the person who employed me as a ship-broker, and it was from him that I received my instructions.

Then, Gentlemen, it appears that the policy upon which the prisoner had authorised his brother to receive the amount of the total loss was one that was effected by Patrick, for the witness Stott says, "I received in August 1839, directions from Patrick to effect an insurance with the Alliance for 715*l.* for his brother Michael. Patrick afterwards signed a letter for his brother Michael, offering to give up or account for all that should be recovered by way of salvage." And this is supposed to have been done by Patrick as the agent of his brother, and under his authority.

Gentlemen, there is also another part of the case on which

you are more directly called upon to say, that there must have been either some partnership, or at least an agency, between the prisoner at the bar and Patrick his brother, and that is with respect to the mode in which the money is disposed of when it is received from the different insurance offices as a remuneration for a total loss.

Gentlemen, they first show that Patrick receives a cheque for the sum of 1012*l.* and also a cheque for 715*l.*, the one being part of the sum insured in the General Maritime, and the other a part of the sum insured in the Alliance. That cheque he pays into the London and Westminster Bank to the credit of his own account, and then they show that he draws a sum of money out again, and as part of the money so drawn out, he receives a bank note for 200*l.*, and then they go on to show you, that that bank note for 200*l.* so paid to Patrick, was on the 8th of February, brought by Michael to the London Joint Stock Bank, and placed there as a deposit in his own name. That is, they show that about two days after this money had been paid in to the credit of Patrick with the London and Westminster Bank, 200*l.* was drawn out by him and paid into the hands of the prisoner at the bar. It does not appear to me that that carries the thing further than to show that there were dealings between them at the time. It will be for you to say, whether the circumstance of that 200*l.* being handed over by Patrick to Michael furnishes any stronger inference than that there were accounts and dealings between them at the time.

Then they go on to show that, on the 26th of March, Patrick carries away 1430*l.*, which is all that is left in the bank, and changes it into sovereigns, and on the next day he purchases 1100*l.* stock in the name of his sister Catherine; but that has no particular reference to the present enquiry unless the two were joined together.

Then, Gentlemen, there is 500*l.* received from the Neptune, and 700*l.* from the same office, and also a sum of 1278*l.* paid by Selden and Johnson, which comes into the hands of the prisoner Michael, and which is paid to his own private account with the London and Westminster Bank. Then, on the day following this, being the 6th of February, it is all drawn out again and immediately invested in the bank of Smith, Payne, and Smith, for the purpose of being placed to the account of the prisoner at the bar, with the British Linen Company at Edinburgh. This shows that these particular cheques, the produce of these

policies, actually came into the hands of the prisoner at the bar. It also shows that he did very soon change it from one stock, or from one hand to another.

Now, I have stated to you, that the main points for you to consider, are first, whether these goods were actually put on board or not, or whether to the knowledge of the prisoner at the bar, there were no such goods in existence, on board this ship at the time. And if you should be satisfied that they were not, and if you are satisfied also, that the policies were effected by him, or by his orders, with a knowledge that no such goods were on board the ship, then it will be for you to say, if you should find that the ship was wilfully cast away, whether that was done by Loose by the desire and procurement of the prisoner.

Two of the points, therefore, which it is extremely material for you to examine with care and attention are, were the goods so specified in the policies, put on board the ship or not? and was the ship wilfully cast away and destroyed by the captain who had her under his command? I will, therefore, call your attention particularly to the evidence bearing upon those two points, which really seem to me to be the hinges upon which this case must turn.

Now, Gentlemen, as to the question whether these goods were actually put on board, you have first the evidence of Mr. Kelly, the shipping clerk of Zulueta and Co., of Liverpool. You observe the ship goes to Liverpool, and she is empty at that time. Zulueta and Co., seeing this ship, hire her and charter her for the voyage. She is of a certain tonnage, and they mean to put certain goods on board her. Now, see what Kelly says, and consider how far, from his evidence, you can suppose that these goods were put on board the ship, before the voyage began. Kelly says—"I am clerk to Zulueta and Co., of Liverpool, and entered their employment in 1831. They are merchants carrying on business at Liverpool and in London also. I was clerk in the Liverpool house; and they were exporters of goods to Cuba. I recollect the house of Zulueta and Co. chartering the Dryad in 1839. I had occasion to go on board her as shipping clerk. She was lying in George's Dock. I knew Captain Loose, the master, by sight—he came occasionally to the counting house of Zulueta. I knew the prisoner also, as owner of the Dryad. I saw him at Liverpool when the ship was loading—she began to take in her cargo about the middle or latter end of August. I saw the prisoner during the time the vessel was taking the cargo on board—twice or

thrice I spoke to him. The ship was put up as a general ship to Cuba, and no goods offered but those of Zulueta and Co. The body of this bill of lading, was filled up by a clerk of Zulueta—it was made out by my directions—it took nearly a week to put these goods on board. The vessel had what is called a stage berth—some of the goods were shipped from the stage, others were taken in from the river in lighters. I was on board the Dryad after the goods mentioned in that bill of lading had been put on board." Then he goes on to say—"There were a few kegs of paint, and one or two boxes of hard-ware which were not ready at the time of clearing, but which were put on board after the declaration of the captain—those were Zulueta's goods. I saw no goods put on board except Zulueta's. I was on board of her two or three days before she went out of dock, and at that time no other goods than Zulueta's were on board. I must have seen them if they had been on board. No goods could properly be put on board but by Zulueta's authority. It would be part of my duty to see that no goods were put on board, except what were intended to be loaded by Zulueta. The prisonsr did not apply to me to put any goods on board." Then the different articles enumerated in these different policies, effected by the prisoner and his brother Patrick, are mentioned to him, and he says that they would occupy about 100 tons.

According to the account of this witness Kelly, therefore, it was his duty to see what goods were put on board the vessel, as if they were not included in Zulueta's own bill of lading they ought to have paid freight for their carriage abroad, and he says he saw no goods at all on board but those which belonged to Zulueta—and he says also that from the position of the vessel, it would have been difficult to have put on board such a quantity of goods as this without its being discovered. Indeed, he says, if you reckon up the whole tonnage of the various goods mentioned in these policies, they would occupy nearly 100 tons, and he tells you that Zulueta's own goods occupied two-thirds of the vessel, and that the vessel did not appear to him to be more than two-thirds full when he last saw her. She would carry about 300 tons, therefore there would be left about 100 tons or a little more empty, so that, according to his statement, these goods, if they had been put on board, would have nearly filled the vessel up. He says that to his knowledge no other goods than those included in the bill of lading of Zulueta were put on board, except a few kegs of paint and a few cases of hardware.

Now, Gentlemen, observations have been made to you by the learned counsel for the prisoner, founded upon the fact of this small quantity of goods so put on board the ship by Zulueta not being included in the bill of lading; and it is right therefore that you should see clearly how the matter stands. There is no doubt that, in point of strictness and propriety, those kegs of paint and those cases of hardware ought to have been included in the declaration of the master; and if they had been, they would have paid at the rate of 10*s.* for 100*l.* worth of goods, and the witness tells you that the duty to be paid to the government upon these kegs of paint and cases of hardware would have been so small that it was not thought worth while to make a new entry of them at the Custom House, or for the master to make a new declaration with respect to them. Improper it was no doubt to the extent of the loss the revenue sustained; but in every other respect it was Zulueta's ship, and they had a right to put those goods on board, the whole ship being chartered to them. An observation, however, has been made to you by the learned counsel for the prisoner, with respect to these cases of hardware and these kegs of paint being so put on board by Zulueta. You will see whether it is entitled to any weight or not, and give it just so much weight as it is entitled to, and no more. It is contended before you, that if this was done by Zulueta and Co. it might also have been done, by the prisoner, and that the goods mentioned at least in one of the bills of lading might have been put on board secretly, without the knowledge of Zulueta, and without the knowledge of the Custom House. The learned counsel seems to admit that with respect to one of the policies—that for the 687*l.*—there is a privity shewn between the prisoner at the bar and his brother Patrick, so as to constitute the agency; but he tells you that it is by no means impossible that the goods mentioned in that policy might have been on board, although they were not seen at the time. There is some evidence, Gentlemen, which brings it nearer to him—the cheques that were paid over by Lyndall and Hall.

Then, Gentlemen, besides the evidence of this witness, Peter Kelly, you have also the declaration made by the master at the time, in which he does not include any of the goods mentioned in the three bills of lading, to which your attention has been directed. That is open also, however, to the observation I have just called your attention to, namely, that you do find, in point of fact, that there was some small quantity of goods put into the

vessel by Zulueta after the declaration had been signed by the master, so that the declaration certainly is not conclusive upon the subject. However, there it is, and you will observe that that declaration of the captain would have omitted a very material part of the cargo, if it omitted (as, in point of fact, it does omit) even all the goods that are mentioned in the last bill of lading, to which I referred, namely, that for 687*l*.

Then, Gentlemen, besides that, you have the evidence of other persons who were on board the ship. And, first of all, you have the evidence of Maxwell, who tells you that he was mate on board the Dryad in 1839. She was bound, he says, from Liverpool to Santa Cruz; and he goes on to say, that he joined the vessel on the 4th September, three or four days before the ship sailed. He says, "The hold was about two-thirds full. I saw the goods mentioned in Zulueta's bill of lading on board. There might have been eighty crates of earthenware there, for anything I know; but there were no goods taken on board after I joined, except a few cases of hardware and a few kegs of paint. There had been no goods stowed away in the cabin, to my knowledge. The provisions for the crew were in the forecastle hold, and it is common to put them there. The salt, which was in bags, was in the after part of the vessel." Then he is asked, whether he often went down into the hold during the voyage, and he says, "I did, to get water; and I observed that it was about two-thirds full. Throughout the whole voyage nothing was put on board, except the kegs of paint and the hardware, which I have already mentioned. I must have seen it if there had been."

Then, Gentlemen, they call Schultz; and I will only call your attention to that portion of his evidence which relates to this part of the case. When I come to state to you the rest of his evidence, I will make an observation to you with reference to the credit due to him, and as to how far he is entitled to any belief at your hands, where his statement is not borne out and corroborated by other witnesses in the case. He speaks also to the state of the cargo. His evidence upon this point is to the same effect as that given by Maxwell. He says that the ship was two-thirds full, and that none of these goods were put on board after he joined the ship.

Now, Gentlemen, that is the evidence which relates to the mode in which the ship was loaded; which is, as I have before stated to you, so far important, that, if you feel any degree of

doubt as to whether the goods in question were put on board or not, you lose at once any motive on the part of the captain for casting the ship away, and any motive on the part of the prisoner at the bar to cause and procure that act to be done; because, if he had goods on board the ship which were worth the money for which they were insured, much better would it be for him, if they were fairly insured, to sell them when they arrived at the port to which they were destined, than simply to recover against the underwriters the value of them. Indeed, there would then be no ground for imputing any fraud at all. The transaction would be one of the most ordinary occurrence. It would be merely the case of goods being put on board a ship, and insurances effected upon them in different offices in London. The main point, therefore, for you to determine will be, whether you are satisfied that, if Captain Loose were now upon his trial before you, you would convict him of feloniously casting away this vessel for the purpose of defrauding the underwriters.

Now, Gentlemen, that question will depend very much upon the evidence, first of Maxwell, the mate, and of Schultz, so far as his testimony is entitled to any credit at your hands, and also of Captain Tait, the captain of the Bencoolen; not that the captain of the Bencoolen sees or is present at the time of the loss of the ship, but he deposes to a state of facts, with respect to the captain of the Dryad, which will require you very seriously to consider, whether Captain Loose, the captain of the Dryad, was not at that time intending to destroy the vessel, the statement which this witness makes being one which (though I pronounce no opinion upon it) leaves it open to you to say, whether it was the design of the captain at that time, if he had not been prevented by the crew, to run the vessel on the reef of rocks, which you have heard of, off Cape Hayti. The learned counsel for the prisoner on the other hand has put it to you, as he has a right to put it; and it is certainly a matter for your consideration that the captain was, in point of fact, doing all he could to prevent anything happening to the ship, and that the crew were either in a state of mutiny or insubordination, so that it was they, who were endeavouring by force to destroy the ship, and it was the captain who prevented it.

Now, the only direct evidence on this part of the case, that is, the only person who affects to say that he was present when

the vessel was destroyed, is that witness of the name of Schultz, whose testimony was laid before you last night, and in considering that evidence which is so important as affecting the captain, you ought not to lose sight of the other circumstances proved in the case. If you should believe that there was any fraudulent dealing between the captain and the prisoner at the bar that may aid you (when you have a motive fixed and assigned) in determining whether the testimony which is brought before you, to prove the fact of the destruction of the ship, is true or not. You will give no more force to the testimony against the prisoner than it requires and exacts at your hands. You will judge of the conduct of the parties as men acquainted with the ordinary business of life, and draw such inferences only, as necessarily arise from the facts brought before you.

Now, Gentlemen, the first of these witnesses, to whose evidence I will now call your attention, is Ronald Maxwell. He says, "I was mate on board the Dryad in 1839, she was bound from Liverpool to Santa Cruz; I was engaged by Captain Loose—I joined the vessel on the 4th of September, 1839,—I went on board that day—the hold was about two-thirds full. There were no articles put on board after I came, except a few kegs of paint, and a few cases of hardware. The provisions on board were two tierces of beef and four barrels of pork. This was not sufficient to supply the crew out and home, it was a very scanty supply for the outward voyage. It is usual for ships bound on such a voyage to carry provisions for the voyage out and home. I never knew provisions supplied to a ship in the West Indies. We left the dock on the 6th, and sailed on the 7th. The captain gave me directions shortly afterwards to put two tackles into the long-boat, so that it might be ready for use in case it should become necessary. I did so, and they were kept there until we got out of the Channel. We went by the North Channel."

Now, Gentlemen, that I suppose has been laid in evidence before you, in order to show something like a previous design on the part of the captain to destroy this vessel. I confess that it does not appear to me that, in this instance, more was done than any other captain would have done, or that this of itself would excite any suspicion, for the weather is described to have been somewhat roughish, and there seems to be nothing improper in having the long-boat ready for use in case anything should happen to the ship in the narrow seas out of which she

was then sailing. He goes on to say, "At the time these directions were given it was a foul wind and blew hard. We made Carlingford lights on the coast of Ireland, I sounded the pumps, and the first time I sounded the larboard pump I found it was unfit for use—it was choked up—I mentioned it to the captain—I endeavoured to clear it, and could not; and I suggested to lift it, but he would not allow that to be done, and that pump never was cleared while I was on board." That, again, is mentioned to you as a singular circumstance, that they should go to sea on this distant voyage with one of the pumps not capable of being worked. He says, "I never went to sea before with one of the pumps choked up. As mate I had to calculate the ship's reckoning, and it was material for that purpose that I should see the chronometer. I applied to the captain for leave to look at his chronometer, but he would not allow me, and I could not ascertain the position of the ship, except at a rough guess. On the 17th of October, we made one of the Virgin Islands, called Virgin Gorda. That was the first land we saw in the West Indies. The captain came on deck, and soon after I saw breakers a-head—between four and six miles distant. The captain had the same opportunity of seeing them that I had. On coming on deck I ordered the helm to be put down, so that the ship would come round. The captain came and went to the wheel, and hove the helm up again. He took the helm away from Schultz, the carpenter, and told me to mind my own damned business, and take the studding sails in. Part of the crew then came from the waist, while the captain was at the wheel, and said that if he was going to put the ship on shore they would take the command themselves. The captain then left the wheel, and I gave Schultz orders again to put her head round. She was very close to the breakers at that time. The captain told me that he would have me tried for mutiny. If I had not given the order I did to Schultz the ship would have gone on shore. The weather was favorable. It was moderate —we had a complete command of the vessel at that time. On the 19th of October we arrived at the Silver Bank. I did not consider that a proper place to be in. It is a dangerous place. It is laid down on all charts and is known to navigators. It is a large bank about sixty miles from St. Domingo. There is a good and a well known channel between the Silver Bank and St. Domingo. There was no weather to carry us out of our own

right course. We struck upon the rocks there, and before we struck I pointed out a rock to Captain Loose. He said he could not see it. It was plain to be seen at that time. When we struck we were fast, and we remained so for about fifteen or twenty minutes. Previous to striking on the ground we saw the rock. The captain went and looked over the ship's side, and cried out "we are lost, we are lost." If, without putting about, we had hauled our wind we should have escaped. The captain ordered the jolly boat to be put overboard, and went down into his cabin, and was putting on a life preserver. The vessel then dragged off that rock and struck a second time, by which two of the pintels of the rudder were knocked off and the rudder was unshipped. I asked leave to make a jury rudder either out of a sprit sail yard or out of a main boom. The captain would not let me. There was a jury rudder made out of the studding sail booms—pieces of oars and a few pieces of spare plank. I do not consider that those were proper materials to make a jury rudder of when we had other materials on board which could have been taken. The captain said we were in a pretty condition now, in a ship at sea without a rudder—that we had better have been all asleep a day or two before and gone ashore at Anagada. We rigged the jury rudder and proceeded to Port Hayti. The proper course would have been that marked out in the chart. We ought to have gone straight for Cape Hayti, instead of which the captain steered in for the land of St. Domingo, and made the harbour of Porto Plate. He kept close along the land, and sometimes almost close among the breakers. In my judgment the course he took was a dangerous course. If he had gone direct from the Silver Bank to Cape Hayti there would have been no danger from breakers. The crew were alarmed—they had their clothes ready packed up and ready to leave immediately in case the vessel should go on a-shore." Then, he says, "We were close to a reef off Cape Hayti on the 22nd—it was then about half-past 3. We could see the breakers and the rocks—the rocks were above the water. On that day the jury rudder was unshipped—the straps were loosened—we stood out to sea again that evening. I did not consider that there was any necessity for that, for I thought we could get into the harbour. The captain asked me what I thought best to be done, and I told him I thought the best thing was to go into the harbour—he said he would not unless he had a pilot, for if any thing happened he would lose the insurance. No signal was

made for a pilot. The captain told me to go forward and call David Davis, the second mate, and Schultz, the carpenter, to give their opinion—they said they thought it was best to go in, but he said he did not know the passage. I am of opinion that a skilful person with a chart might have got safe into the harbour; but instead of doing that the captain took the ship out to sea. We saw a ship during that evening on our larboard quarter. I told the captain of it, and said if he liked it we might go down and bear for that ship—that she was a large ship, and I thought she was a man of war, and she might be of service to us; but he did not choose to do it. Next morning we steered again for the shore—we got very near the reef. The Bencoolen, a large vessel, was lying at some distance from us. That ship fired a gun and hung out a flag, which I considered to be signals to us that our ship was in danger in the place where she was. The captain was below at that time. I went down and told him that the large ship had fired a gun and hoisted an ensign—he said that was nothing to him. Our course was not altered. The captain made no signal for a pilot. I suggested to him to hoist the union jack as a signal for a pilot; but he would not let me. I saw the Bencoolen hoist an ensign at the foremast, as a signal for a pilot, and I saw one boat come out to the Bencoolen. Shortly afterwards, the boat came from the Bencoolen towards us. We were then about two miles from the reef. The master of the pilot-boat kept waving a flag to us all the time he was coming from the Bencoolen. That was a signal for us to bear down towards him, and to change our course. When they got near to us they hailed us, and asked us where we were going to with the ship. The pilot came on board, and the captain called him aft, and asked him if he would take charge of the ship—the pilot said he would take her in if the crew would pay attention to him—and the pilot took her into the harbour. That was on the 23rd October. I left the ship while she was at Cape Hayti. I told the captain my reason for declining to go further with him. I obtained my discharge from him. The reason which I gave to him was the true reason. I then joined the Bencoolen. The Dryad went to sea while I was at Cape Hayti, and I heard of her loss before I left that place."

According to this man's account, therefore, the ship had been very nearly cast away twice—three times, indeed:—first, at Anagada; then on the Silver Key; and, a third time, on a

reef of rocks off Cape Hayti. You must say whether you believe the account which the witness has given, and you must say whether, from that and the other evidence in the case, you necessarily come to the conclusion that the captain was doing all this with an intention to lose the ship. You must form your own opinion as to whether those were nothing but the ordinary casualities of the wind and waves, or whether there was in the mind of the captain a fixed and wicked design from some sinister motive to destroy the ship.

Then he goes on to say, on his cross-examination,—" The provisions for the crew, of beef and pork, were in the forecastle—it is common to put them there. Sometimes some of the outward provisions are put into the hold, but if they had been in the hold of the Dryad I should have seen them. The salt was in bags in the after part of the ship. I had sailed in these seas before, and knew them perfectly. It is not the duty of the carpenter always to keep water in the long boat, but it is his duty to wet the outside of it, as also the outside of the vessel. When we got out of the Channel, we took away the tackle from the long boat. Near to Liverpool there was a great deal of shipping—we had heavy weather in the Channel. We had no log line on board. The use of a log line is to calculate the rate at which the vessel is proceeding. I never went to sea before, in any ship, with one of the pumps choked. It was the larboard pump that was choked. I never saw the chronometer, though I applied for it. There have been cases in which vessels of the size of the Dryad, have kept dead reckonings. I can give a rough guess at the rate at which a vessel is going, without a log line. When we got to Virgin Gorda, we were going about four, or four knots and a half, an hour. We had the studding-sails set. It is not difficult to bring the vessel round with the studding-sails set, but there would be a danger of carrying away the studding-sail booms. When I ordered the carpenter to put the helm down—to put the ship about, the studding-sails were set, and the captain blamed me for putting her round before they were taken down. On coming to the Silver Key, I saw a rock and shoals a-head. The water was discoloured. I pointed it out to the captain, but he said he could not see it. There was no tackle in the long boat then. The jolly boat was lying on the top of the long boat. We made a jury rudder, after the rudder had been unshipped, but it was insufficient as a jury rudder. At the time we made it, we were two hundred miles from Cape Hayti. We kept beating

along the coast. We saw the ship which we knew afterwards to be the Bencoolen. She had a rudder. I wanted the captain to run down to her to get assistance. The captain said he could not go into the harbour without a pilot, and I suggested that he should keep the ship out at sea that night; and he adopted that suggestion. At day-break the following morning, we were two miles from the reef—the Bencoolen was also about two or three miles off. I heard a gun fired from the Bencoolen, and when I went down into the cabin I told the captain of it. I told him that the ship to the northward had fired a gun and hoisted an ensign, and that I thought we were getting too near the reef; he said,—'That is nothing to me.'" Then he says—"I came to England about the 23rd July 1840. I came to Liverpool, and have remained there ever since." Then he gives an account of what you may probably recollect, which at last comes to this,—that on a preceding evening, while in court here, he was in a state of intoxication. He was not under examination at the time; but he was carried out and placed in a state of confinement. He fenced a good deal, certainly, in his mode of answering the questions which were put to him upon that subject. He did not seem willing to admit that it was a place of confinement, though no one can doubt what it was that happened to him; and he admits that a similar thing happened to him before, at the time the examinations were being taken before the magistrate, upon which occasion he was taken to some room in the Compter, and after sleeping there was dismissed the next morning. It seems as if he has not sufficient command and control over himself to avoid taking too much liquor when he is on shore, though he has assured you, on his oath, that when he is at sea he never drinks wine or spirits; and Captain Tait also confirms him in that, by saying that as far as his observation has gone, he is a man of sober habits when on board ship. You will attach as much weight as you think is due to that circumstance and no more, when you consider the question as to the credit you ought to give to the evidence of this witness.

Then, Gentlemen, we come to the evidence of a witness named Benjamin Schultz, and before I begin to state to you the substance of his testimony I must inform you that I do consider him a person whose evidence you ought to listen to with a very great degree of jealousy and suspicion, for it is impossible to say that a man who is obliged to admit (whatever the circumstances are) that he has taken a false oath on one occasion, is a

person upon whose evidence you can fairly rely, when he is brought before you to contradict that which he has before stated on his oath. No judge, sitting in the place which I now occupy, will ever be found to palliate the offence which has been committed by this witness, of taking an oath which is false to his knowledge at the time, whatever may be the circumstances attending it. But then, Gentlemen, this also should not be forgotten that, where his statement is borne out by other witnesses, their testimony is not at all impeached by that which he has stated. Certainly up to the time when the mate leaves the vessel —that is when they get to Cape Hayti—there is no material variation between the evidence which this man gives, with regard to what took place on board, and the evidence which Maxwell, the mate, gives, who is free from all imputation of this kind. It is, however, subsequent to that, and when Maxwell has left the ship, that the loss of the ship takes place; and you must make up your minds how far the testimony of Schultz is entitled to consideration at your hands when it is unsupported by other evidence.

Gentlemen, Schultz states that he shipped as carpenter on board the Dryad on the 1st September, 1839, at Liverpool. He says, "The ship was found very poorly. We were obliged to unreeve the tackle of the long boat to make use of for other purposes. There were no spare spars, and no provisions for the homeward voyage. I remember the rudder being unshipped when we lost two of the pintles. There were no spare spars to make a jury rudder, and we broke up the hencoop for that purpose. I was at the wheel when the ship came near Anagada. I saw rocks and reefs and breakers a-head. I called Maxwell, who ran forward, and looked, and came back, and told me to keep the wheel down, to bring the ship round, and then he went down to tell the captain." All this, you observe, agrees with what Maxwell told you before. "I hove the helm down. The captain then came up—he cursed me, and pushed me, and put the helm up again, and asked me who gave me orders to put the ship about. I told him I did it myself. The captain stood at the helm for a few minutes, and stood for the breakers again. When I hailed the mate, to tell him I saw breakers, we were steering right on for the reef. Before the captain went below, some of the crew came and asked him what he meant to do—they told him he should bring the ship round, before she ran on the reef—and he said, if they wanted to put her about, they

must do it. I have recently returned from the coast of Africa, where I had a fever, and I am not well yet. The captain shortly afterwards went below, and I remained at the wheel. When the captain went below, the ship was steering right for the breakers. Her head was towards the breakers all the time. I put the helm about again and cleared the breakers; but we went very close to them—if we had waited a few minutes longer we should have struck upon the reef. There was not much more than time to clear the reef. We were at Anagada on the Thursday, and got to the Silver Key on the Saturday. I was at the wheel, and saw breakers a-head. I called Maxwell, and shewed him the breakers, and he ran forward, and looked, and saw breakers, and a rock sticking out of the water. I could see the breakers and the rocks plainly with my naked eye. He went down to tell the captain. The crew were all on deck, and they saw the breakers. A man in the fore-yard called out, 'We have not more than four feet water under our bottom.' The captain came on deck—he had a glass with him. The mate pointed out the rocks and breakers to him. The captain said he could not see the rock or the breakers. He looked with his glass. About ten minutes after the captain said he could not see the breakers, we struck on a rock. The captain was then below, but he came on deck when we had struck. When he found she had struck, he cried out, "O lads, we are lost! We are lost!" The long boat was fast on deck, and the jolly boat was on the top. The vessel hung upon the rock but a short time. She dragged off, and knocked two pintles off the rudder, and the rudder became unshipped. This was in the morning, about seven o'clock. I made a jury rudder out of an old topmast and the hencoop. The night before we made St. Domingo, the straps of the jury rudder were carried away. The captain was on deck. He had with him a kind of skin, to put over him, to save himself. It was a life-preserver. The crew came aft, and told him that if he put that on they would cut it all to pieces. Till we came to the coast of St. Domingo we kept always running very close to the shore, among many rocks and breakers. When the jury rudder was unshipped, the captain sent Davis to me, and asked what we had better do. The vessel was then drifting fast to the rock. We were then about seven miles from Cape Hayti, and I saw a reef. We were hugging the shore. Maxwell, the mate, fetched me and Davis, who acted as second mate. The captain asked us what was best to do. We had no rudder to the ship, and the

vessel was drifting for the shore. We told him that if he could not get into the harbour it was better to keep out to sea for the night. He then told the mate to trim the yards and to keep the vessel for sea. The rudder was shipped again, and we put to sea. In the course of the night we saw a large ship, and we saw that ship again in the morning about day-break. She was standing right for the harbour, five or six miles from us. She fired a gun and hoisted an ensign. As soon as it was breaking daylight, we went about and stood for the rocks again. When we first saw the large ship in the morning we were standing for the rocks. I was not at the wheel when the large ship fired a gun—I do not recollect whether Simpson was at the wheel or not. We understood from the firing of the gun and the hoisting of the ensign, that it was a signal to us that it was a dangerous place, for we saw the breakers right a-head. When the gun was fired by the large ship the mate was on deck. He remained for a short time and then went to the captain. The captain came on deck and then went below again. He did not direct the ship's course to be altered, but still kept on for the rock. I saw a pilot boat coming off from the ship. The people in the boat had a flag, and they made signals to us by waving it to keep off the rock. The captain was then on deck. He saw the signal—he neither altered the ship's course himself, nor ordered anybody else to do it. The boat still pulled towards us, and continued to wave the flag all the time; at last the boat came within hail of us, and the pilot called out and asked us were we going to run her right on the reef. The ship's course was not altered until after the pilot came on board, but the pilot, as soon as he came on board, altered her course directly and brought her into the Port of Hayti. The crew made complaints and wanted to leave the vessel, and Maxwell, the mate, did leave. I had never been to Hayti before, but I should suppose it would not be very easy to get sailors there. The captain would not allow the crew to leave the ship; after we got into the harbour the ship was surveyed and repaired. Captain Tait was one of the surveying officers. We sailed from Hayti on the 5th of November, being then bound for Santa Cruz. We sailed on the 6th out of Cape Hayti, and on the 10th we struck on the reef off Cape Cruz—we were then about six or seven miles from the land—we could see the reef on which we struck in the day time, but it was night when we ran upon it—we saw plenty of small rocks the day before, but we did not see the

reef upon which we struck. The captain was on deck all the time, and he was on deck all the night when we struck. He had never remained on deck all night before, during that voyage. Simpson was at the wheel when we struck. The captain told Simpson to let go the wheel, and go away, or else he might get hurt. This was about half past two in the morning. The crew came all of them on deck when the vessel struck, but the captain who was on deck gave them no orders. The men were doing nothing. The vessel was lying right on the reef. No effort was made by the captain, or by his orders, to get her off. By eleven o'clock the same day, she was quite fast. From half past two, when she struck, to eleven o'clock, when she was quite fast, no orders were given by the captain to the crew to make any effort to get her off. She was then making no water —she was tight. There were no holes in her, but she was quite sound. I sounded the pump, and found she was quite tight. There was only one working pump in her. The larboard pump would not work, it was choked up. There were some pieces of iron or something in it, we could not tell what, which prevented that pump from being worked. I found that out in Liverpool before we started, and I heard the mate call the captain's attention to it, but no attempt was made to clear it. It was fine weather with a nice little breeze, when we came on to the reef off Santa Cruz. The vessel was quite manageable, and I could see no reason why her course should not have been altered so as to avoid the reef. During the day, before we struck, we saw a great many reefs and shoals. I do not know what was the depth of water, for we never tried to heave a lead. No orders were given to sound all the way, till we got to Santa Cruz, where we struck. We had anchors on board, so that we might have brought up if we had been ordered to do so, to avoid the shoals. The sails were all set when we run on the reef. The captain did not order them to be lowered —we took them down ourselves. The fore-sail was set and the main-sail—two top-sails and the fore and main top gallant sails. They were all set when we run on the reef, and none of them were ordered to be taken down till the men took them down themselves. About 10 or 11 o'clock a canoe came off to us, with Spaniards on board. By that time the vessel was hard and fast. The captain asked the Spaniards if there was not a town near—they answered yes, there was a little town about thirty miles over the mountains, and they told him there was an English Consul there.

The captain went ashore with the Spaniards, and when he came back he told us, he would try, the next day, to get to this little town. He slept below, in the cabin. He went away again about 9 o'clock next morning, in the jolly boat, and staid till about 3 o'clock in the afternoon, when he came back again. He then told us that he had tried to come to the town, but could not reach it. When the captain went on shore the second time, he sent the boat back from the shore. I and Simpson got into the jolly boat, to try how she would sail; and we made a mast for her out of an old long-boat oar. We did this to see if she would answer for sea, in case anything should happen. As we were going about, we came to the stern of the vessel. Above the shoal of rock, on which the vessel struck, the water was very clear, When we were at the stern of the vessel we saw a cigar box, and an iron bolt lashed to it, at the bottom of the water, at the depth of about six fathoms. We lashed the boat oars and everything we could together, to get it up. We succeeded in getting it up, and took it on board, and dried it, and opened it. There were four or five letters inside the box, and also some leaves of the log book, which we dried and kept. The place where we found them was not far from the window of the captain's cabin. The captain came on board at 3 o'clock. He stopped on board that night, and the next morning, about 9 o'clock, he came on deck, and asked me if I had sounded the pump lately—I told him yes, about two hours ago, and that the vessel was tight. He told me to sound her again, and I did so, and found five feet of water in her. He said—'Well, she has knocked a hole through her bottom now.' The captain staid on board that night, and the next day he went ashore, with the Spaniards, in our jolly boat, and took four hands with him. That was the fourth day after the ship had struck. About seven o'clock in the evening, when the captain was on shore, the next day, I found a large hole in her. She was hard and fast upon the rock, and had been so some time, so that she could not have bumped a hole in her bottom by the effect of the wind or the water. The hole was so big that I could creep through it. It was under the stern, in the captain's state room. We quitted the ship to go to Jamaica, the next day. When the captain came back, I pointed out the hole to him. We asked him how it had come there, he laughed but made no answer. From the time we were at the Silver Key the crew kept all their clothes packed up ready, so as to save themselves

if any thing happened. When we were upon the reef at Santa Cruz the crew were quite willing to work the vessel, and they would have endeavoured to have got her off if they had been directed to do so. The captain remained with us four days at Falmouth, in Jamaica. We lived in an unfinished house with him there. For two days he found us in victuals and drink, and then he came and told us that we must go and sign a protest—we told him we would not before he paid us our wages, and found us a place, and found us provisions till we got ourselves a ship, and he promised to do so. In consequence of that promise I put my name to the protest, and I was sworn to it. The captain made the statement, and I swore that it was substantially true; but I do not recollect a word about it now. I could not understand much what the Gentleman was reading. I could not make out what it was, but I signed it because the captain promised to pay us our wages and keep us on shore till we had another ship. As soon as we had signed the protest the captain told us to go and see about our own business. There was then about 4*l.* and some odd shillings due to me. He did not pay me, but gave me this order which is now produced to me." Then that order is proved by Mr. Frost to be in the handwriting of Captain Loose, and it is addressed to the prisoner at the bar, requiring him to pay to Benjamin Schultz, or order 4*l.* 13*s.* 4*d.* "After this I was told that the captain went to Montego Bay from Falmouth. Simpson had the care of the papers found in the cigar box. Before the captain went from Falmouth, he sent for Simpson. I was in the same house, and saw Simpson go in to him. When he went in he had with him the papers we had found in the cigar box. When he came out again he had not the papers, but he had four Jamaica 1*l* notes —12*s.* to the 1*l.*"

Then, Gentlemen, he is cross-examined, and he says, "At Hayti there is a colonel of the port and a commandant. Three of the sailore were taken into custody there. At Hayti new pintles were put to the rudder, and the rudder was unshipped. The coast from Hayti to Santa Cruz is very rocky. It was not very dark on the night when we struck on the 10th, but it was so dark as to prevent us from seeing the reef. We had gone safely through all the rocks we saw in the day time. We first struck upon a shoal, and then got right upon the reef, and about 10 we were hard and fast there, stem and stern. The vessel drew, I suppose, about twelve feet of water, and the water all round us was about the same depth. The captain went away

about 11 o'clock, on the first day, in the canoe, and was absent the greater part of the day. The vessel was then tight, and the following day he went away again. I sounded the pump while he was away, and the vessel was tight then. Three hours after I had sounded the vessel and found she was tight, I sounded her again and found five feet of water in her. The hole which I found was of about 2½ feet diameter. There was no copper there. It was above the copper, almost level with the water. It was cut from the inside. It had been cut through the lining of the cabin, the ribs of the ship, and through a three inch oak plank. I did not observe any noise while the captain was in his cabin. It would have taken me a couple of hours with all my tools to have made that hole. There were no timbers in that place—it was a spare place where there were no timbers. It was skin inside and skin outside. The timbers are usually about six inches apart, and sometimes less. The hole was about two and a half feet wide and nearly square, and it was big enough for me to have crept through. I swore to the truth of the captain's protest. David Davis, the second mate, was present at the time—as were Simpson, Fitzpatrick, and Witridge. The protest was read over in my presence before I signed it, and they heard it read over. I did not know that there was an agent for Lloyd's, and English authorities and English magistrates, at Falmouth. The gentleman who read over the protest, read it in English." Then he gives an account of his coming to England, and says, that he was in Court yesterday, when Maxwell, the mate, was examined.

Then, on his re-examination, he says, "The hole was right under the stern on the larboard side. There was a necessary and a large pipe going through, which made it easier to make a hole there than anywhere else. The men were all over the ship—the captain's room was left locked—I do not know when this hole was first begun—I found it in the inside. When the captain was on shore, he sent a message back by the man to go into his state room for something, and when we went in we found the hole. We opened the door of the state room, and as soon as we opened it, we saw the hole."

That, Gentlemen, is the evidence which Schultz gives. Then there is put in, which is very proper on the part of the prosecution, this protest, the statement in which is directly contrary to that which he has made here. The material part of the contradiction, if I understand it rightly as it was read, is this—that

the protest itself imputes the loss of the ship to accident, only occasioned by the winds and waves and forces of the currents, and not at all to the cause to which the witness now attributes it, for, according to his testimony, it would seem that the death-blow given to this ship was a hole made by the captain. I have already stated to you the degree of drawback that exists with respect to the weight due to his testimony from the circumstance (however he may attempt to palliate it) of his having formerly pledged his oath to that which would lead to a different conclusion. There is one other point of contradiction also between his evidence now and the statement contained in the protest. In the protest he says, that an ensign was hoisted at the time for a pilot, whereas he swears now that there was none. That is borne out, indeed, by Maxwell, but I must add that the captain of the Bencoolen, who is a disinterested witness, to whose testimony I am now about to call your attention, does not remember whether there was or not. How far you will give credit to the statement made by this man Schultz, is a question for you to determine, and not for me.

Now, Gentlemen, you will observe that the next witness (Captain Tait) speaks only to what occurs at Cape Hayti, and it is important as assisting you to form a belief from the testimony which he gives as to whether the captain of this ship, the Dryad, was at that time endeavouring to destroy the ship. The ship was clearly lost afterwards; for a total loss has been claimed and paid. The question is, whether it was wilfully destroyed by the captain; and if you are satisfied that two or three days previous to the loss, he was really seen endeavouring to cast the ship away—that, though it would be no evidence, of course, of the fact of the actual destruction, would be a matter of fact to be laid before the Jury, to exercise their judgment upon, together with the other facts in the case.

Now, Gentlemen, Captain Tait tells you that he has been bred to the sea all his life—that he has commanded a ship for three years, in the merchant-service—that he has frequently crossed the Atlantic—and that he is acquainted with the navigation of the West Indian seas. He says, that, in 1839, he commanded the Bencoolen, 402 tons register, making the voyage from La Guierra to Cape Hayti. He says, "I came to the entrance of the port on the morning of the 23rd. I know the Silver Bank. It is laid down in the charts, and it is well known to navigators. It is generally called the Silver Key. It is a dangerous bank.

In going from Liverpool to Santa Cruz I should not go in the line of that bank. To do so would be an unusual thing. If a vessel, coming from Liverpool to Santa Cruz, went by the north side of St. Domingo, she ought not to go upon the Silver Bank, or come near it. There is a channel between the Silver Bank and St. Domingo, forty or fifty miles wide, and that channel is free for vessels safely to navigate. I know of no object that a vessel could have in going to the Silver Bank. I should think that bank extends about twenty-five miles. No vessel could attempt to go over it without great danger. If a vessel were upon the Silver Bank, and meant to go to Cape Hayti, it would not be proper for her to come in too close to the shore, and it would not be right for her to come in close to Porto Plate. There are many shoals between Porto Plate and Cape Hayti, close in shore. In my judgment, the blue line, delineated on the chart, from the Silver Bank to Cape Hayti, denoting the course the Dryad took, is not the proper course. It is wrong in coming in to Porto Plate and coming too close to the shore. There would be great danger of the vessel going on shore. I should think there would have been no difficulty in a vessel which had got upon the Silver Bank, going with a jury rudder direct from the Silver Bank to Cape Hayti without coming in to Porto Plate. On the morning of the 23rd of October, I was about five miles off the harbour of Cape Hayti. There are directions, shewing the proper mode of entering that harbour, which mariners carry with them. I followed those directions till I got a pilot. There was a vessel in sight, outside the harbour, which turned out afterwards to be the Dryad. She was to the eastward of me when I first saw her. This, which is now shewn to me, is a sketch I made. It describes the entrance of Cape Hayti, and the relative situations of the Bencoolen and the Dryad. I should say, that for the Dryad to get into the harbour, she had no business to be at the spot where I first saw her. There are dangerous shoals there, and reefs, and breakers upon those reefs. I could see them from the Bencoolen, and they must have been visible from the Dryad, for she was between me and the breakers. When I saw her, she was steering right on for the breakers. There was very little wind. It was battering about. There was no bad weather to carry her in that direction. I should not have advised her to have come to an anchor there; but she might have put about. She appeared to me to be in danger, and I apprehended she was

going ashore. I fired a gun, to warn her of her danger. Such a signal would be perfectly understood by mariners. She did not change her course, but still steered for the breakers. I had my union-jack flying for a pilot. I did not take notice whether the Dryad had or not. A pilot came off to me, and the Dryad was lying in a situation where, if she had hoisted a signal for a pilot, a pilot might have come off to her. There were three pilots in the boat which came to me. One of them stayed with me, and the others went to the Dryad, which was then two or three miles off. She was not at all in the right course for the harbour. I was watching all the time while the pilot was going to the Dryad;—he went by my desire. At the time I gave him directions to go, it appeared to me that the Dryad was in danger of getting on shore; and it was in consequence of that, that I gave those directions. I gave him a flag to take with him. The pilot made the flag fast to the end of the boat-hook, and kept waving it up and down as the boat went along. I should think that that signal must have been seen from the Dryad. It would be a signal well understood to inform the people of the Dryad that they were in danger. The course of the Dryad was not at all altered till the pilot came on board; but after he got on board it was altered. She was brought round off the direction of the reef, and in the proper course for the harbour, into which she was carried. If she had kept on in the same course she was going when the pilot went on board, she would have gone upon the reef. I saw her when she was in the harbour of Cape Hayti, and I saw Captain Loose there. I was on the survey. She had broken the pintles off her rudder. She was repaired there, and sailed again before I left Cape Hayti. I engaged Maxwell, the mate, there; he assigned a reason to me for leaving the Dryad, and I engaged him to serve on board the Bencoolen. He continued on board the Bencoolen till the end of the voyage; he was a steady and sober seaman. In my judgment, in going from Cape Hayti to Santa Cruz, it would not be right to come in close to the land, and to keep close along the shore when you make the island of Cuba. It would not be right in making Cuba, to hug the shore too close, for there would be danger of getting on shore. By keeping a good offing, there would be no difficulty in making Cape Cruz, and avoiding these shoals. I have never been to Santa Cruz. There are no sailors to be hired at Cape Hayti for an English vessel, for I wanted them myself, and could not get them."

Then, on his cross examination, he says, "There are no Englishmen at Cape Hayti, and you cannot get sailors of any kind there; you might get some idlers, but no seamen. The windward, or the Northern Passage, is laid down upon the chart as a passage to go to Santa Cruz. It is not possible to keep a tolerably accurate account by what is called a dead reckoning, but it has been resorted to as the only reckoning kept; it is very seldom done now, though it used to be formerly. Many men will keep a dead reckoning, and be right within ten miles. It would not have been prudent to go direct from the Silver Bank to Porto Plate, right in to the land; but the prudent course would have been to bear towards the land, and so make for Cape Hayti. It is not customary to put a ship about till the studding sail is set. The night before we got into Cape Hayti, when it was just getting dark, I could see the entrance of the harbour, I should think about fifteen miles off. I did not intend to go into the harbour that night. I was making but little way, intending to get a pilot in the morning, which I considered to be the prudent and proper course. When I first saw the Dryad the next morning, I should think I was about five miles from the port. It was almost a calm. There was no land-breeze, and the sea-breeze had not set in. The arrow on that plan denotes that there is a current there. Firing a gun is sometimes a signal for a pilot, but when I fired the gun the pilot was on board my ship.".

Then he goes on to say on his re-examination, "There is a channel on the south side of St. Domingo, and in going to Santa Cruz I should go the passage on the south side. It is not usual to put about a ship with the studding sails set, but if a vessel were close on a reef it would not be right before putting the ship about to wait to take the studding sails in."

Now that is the evidence which Captain Tait gives. It is to be observed that he is quite disinterested in the matter. He seems to have given his evidence as if he had no particular feeling or passion upon the subject. The account which he gives does not bring the transaction up to the time when the ship was destroyed by the captain, if, indeed, she was so destroyed, but to a time anterior to that when she was at Cape Hayti, and subsequently, when, after she was repaired, she left Cape Hayti, It is certainly to be observed that he condemns the course the captain was taking, as one which was imprudent and improper in the situation in which the vessel was, and he ageees with Maxwell and

Schultz in the account which he gives up to the time when the vessel leaves Cape Hayti. According to the account the captain of the Bencoolen gives, he seems to think that at the time he first saw the vessel she was actually running purposely on the reef, and he makes it almost difficult to decide between two contradictory propositions—either that the captain was himself running the vessel on the reef or that the crew had got the better of the captain—that they were endeavouring to do it, and that the captain was doing what he could to prevent it. One does not very well see what possible motive the crew could have for wishing to run the vessel on shore; for nothing but loss, one would think, could happen to them, for their clothes and every thing they had on board would probably have perished, even if they had reached the shore themselves. These, however, are questions for you to consider.

That, Gentlemen, is the whole of the evidence with respect to the conduct and management of the ship. The rest of the evidence relates only to the circumstances that attended the prisoner being taken into custody. Roe, the police officer, says that Patrick was taken into custody on this charge, on the 27th of November, when he was taken to the Mansion House to be examined. He says he looked about for the prisoner Michael Wallace, but could not find him for some time, but that he did find him on the 16th of December, at Lancaster. He apprehended him on the morning of the 17th, in a small cottage close by an arm of the sea, in a place called the Pothouses. He passed there by the name of Wallace. I said, "You must consider yourself in my custody." I searched him, and found in a bag 116*l.* in notes and gold, and I found also some newspapers containing an account of his brother's examination at the Mansion House. It is natural enough that those newspapers should have been sent down to him by those who knew where he was.

Then, Gentlemen, you have the servant who lived in the prisoner's house, and she says that on the 27th of November, when he came home to dinner, he sent her immediately to Upton Lane, near West Ham, to enquire for Mr. Howden, and when she came back her master was gone. There is no doubt that he made his escape that night from his house, and that he was afterwards in secresy until discovered by Roe at the place where he apprehended him. It seems also, from the evidence of another witness, that the house was found afterwards deserted, on the 6th

of December, nobody being left in the possession of it, the servant being discharged, and the wife of the prisoner and the family having gone from the house, exactly at what time does not appear.

Gentlemen, there is only one other piece of evidence in addition to that which I called your attention to in the earlier part of my address. Frost, the chandler, who furnished this ship states, that he knew Captain Loose, and he believes he is dead; and, being asked his reason for believing him dead, he tells you that some part of his property came into his possession—his clothes and other things, together with a sum of money. Upon the evidence before us, therefore, it would rather seem that he is dead than alive. Part of that property, however, was a bill of exchange for 400*l.*, and that bill of exchange would seem to have been given by a foreign merchant—a Spaniard—in respect of the salvage of the wreck, lost off Cape Cruz. Now, when that bill for 400*l.* became due, it ought to have come to the hands of the present prisoner, and should have been by him paid over to the underwriters, in such proportions as their respective insurances amounted to. The evidence with respect to it is this—Mr. Howden says, "A bill of exchange for 400*l.* was paid to me by Frost, in company with the prisoner, Michael Wallace. At that time I had no idea whatever what it was, but I gave this receipt for it—'We beg to acknowledge the receipt of a bill, drawn by Viniera y Mayot, upon Messrs. Graham and Taylor, and indorsed (blank) of Liverpool, dated, Manzilla, June 5, 1840, at ninety days' sight, which we shall send for acceptance and retain the amount, in deposit in our hands, until ascertained for whose account it belongs, and for any parties it may concern." Then he goes on to say,—"When the bill came to maturity, the proceeds came to our hands. It was due on the 1st of November, but the proceeds did not come to our hands till the 23rd." That was four days before Patrick Wallace, the brother of the prisoner, was taken into custody. The proceeds of the bill (he says) have remained unapplied from that time to this." I suppose that the object of producing this evidence, is to show that although the prisoner's brother at that time had not been taken into custody, yet that for some days, at least, this money was allowed to remain in the hands of Mr. Howden, the ship-broker, without any application being made by the prisoner, that it should be given up to him. What inference is to be drawn from that is a matter more for you than for me.

Gentlemen, the question comes round at last to that which I have endeavoured to point out to you in the course of such observations as I have made upon the evidence; namely, first, whether you are satisfied, upon this testimony, that Captain Loose did wilfully destroy this ship, for the wicked purpose of defrauding those who had underwritten policies of insurance upon the ship, the cargo, or the freight—for that is the charge imputed to him. If you are not satisfied upon the evidence before you that such was the case, then you need not give yourselves any further time to consider the particular charge affecting the prisoner at the bar. But, supposing in the exercise of your best judgment, you are satisfied that the captain was guilty of that offence, then you must ask yourselves the further question, which is that which immediately affects the prisoner at the bar, namely, Whether he incited and procured this act to be done by the captain, for the same purpose for which the captain must have intended it—namely, to defraud the underwriters. If you are not satisfied upon the evidence that the ship was wilfully destroyed by the captain, with that sinister design, and that the present prisoner incited and procured the captain to do it, then it will be your duty to acquit the prisoner; but, if both those questions are found affirmatively in your minds, and judgments upon the testimony which has been laid before you, then it will be your duty to find the prisoner guilty. The question for your determination is one entirely of fact. You will make every fair and reasonable allowance; and, if any doubt remains in your minds upon either of these questions, you will give the prisoner the benefit of that doubt; but if, on the other hand, you are satisfied, and have no reasonable doubt, that these two points are established against the prisoner, then, however painful it may be, it will be your duty to say that the prisoner is guilty. It is altogether a question of fact; and, therefore, I leave the matter wholly for your decision and determination.

The Jury retired to consider their verdict at thirty-five minutes past five, and returned into Court at eight o'clock, finding the prisoner *Guilty*.

Mr. Ballantine. Does your Lordship intend to call upon the prisoner now, the point of law being reserved?

Lord Chief Justice Tindal Yes; let both the prisoners be placed at the bar. They shall have the benefit of any argument which may arise hereafter.

Both prisoners were placed at the bar, and asked what they have to say why Judgment should not be passed upon them.

JUDGMENT.

Lord Chief Justice Tindal.—Michael Shaw Stewart Wallace, and Patrick Maxwell Stewart Wallace. You have been found guilty after a fair and impartial trial by intelligent Juries, of the offence of having feloniously incited one Edmund Loose, the captain of a ship, wilfully to cast away that ship for the purpose of defrauding the underwriters upon the ship, cargo, and effects. I feel bound to say, that I am perfectly satisfied with the verdicts which those two Juries have found. The offence of which you have been found guilty, is one of very great enormity. Who is there that sees the spirit of mercantile adventure and commerce of this country without being sensible how much it depends upon, and is supported and protected by the existence of marine insurance? and who can but see that mercantile insurances could no longer exist, unless the insurer were protected in his fair and honest trading by the just severity of the law against such fraudulent attempts as these? It is a great aggravation of an offence of this kind, that it involves in it danger to human life to which you have been accessory. It is no longer a capital offence, and I rejoice at it. At the same time, I feel it to be my duty to mark by just severity, my sense of the danger of this offence. The sentence of the Court is, that you — Patrick Maxwell Stewart Wallace, and you—Michael Shaw Stewart Wallace, be each of you transported beyond the seas for the respective terms of your natural lives.

A Juror.—My Lord,—the Jury wish to express their thanks for the accommodation which has been afforded to them, and for the courtesy which has been exhibited by all the officers of the Court.

Mr. Clarkson.—Will your Lordship allow me to ask—perhaps, it may be the subject-matter of consideration hereafter, that such of the money as your Lordship thinks has been pointed at by the witnesses sufficiently to bring it within the definition of money belonging to the insurance offices, the produce of these felonies may be directed to be restored to the offices.

Lord Chief Justice Tindal.—That will require consideration.

The following Case was subsequently proposed by LORD CHIEF JUSTICE TINDAL *for the opinion of the fifteen Judges.*

CASE.

THE prisoners were tried before me, and my brothers, Bosanquet and Williams, at the last March Sessions, upon the charge of being accessories before the fact, to a felony committed by Edmund Loose, as principal; Loose, the principal, not having been previously convicted, and, upon the evidence given at the trial, appearing to be not amenable to justice.

The prisoners, having severed in their challenges were tried separately; but it was understood at the trial, that the legal objections, which were urged by the counsel in behalf of the one of them, should be considered as applicable to both.

The first count in the indictment stated that Edmund Loose, late of London, mariner, with force and arms, a certain vessel called the Dryad, the property of Alexander Howden and others, on a certain voyage upon the high seas, then being then and there upon the high seas within the jurisdiction of the Admiralty of England, and within the jurisdiction of the Central Criminal Court, feloniously, unlawfully, and maliciously, did cast away and destroy, with intent to prejudice the said Alexander Howden and another, being part-owners of the said vessel, against the form of the statute, &c. And further, that Patrick Maxwell Stewart Wallace, before the said felony was committed in form aforesaid, at London aforesaid, and within the jurisdiction of the said Court, did feloniously and maliciously incite, move, aid, counsel, hire, and command the said Edmund Loose, the said felony in manner and form aforesaid, to do and commit against the statute, &c. And further, that the said Michael Shaw Stewart Wallace, before, &c. [a similar charge against Michael of being accessory before the fact.]

The second count omitted the words describing the Dryad as the property of Alexander Howden and others.

The third and fourth counts were the same respectively as the first and second, differing only in the mode of charging the intent to prejudice; which, in these counts, was alleged to be "with intent to prejudice Pedro Juan de Zulueta and others, the owners of certain goods then and there laden, and being on board the said vessel."

The fifth and sixth counts, charged the intent to be "to prejudice John Irving, then and still being the Chairman of a certain Company called by the name of The Alliance Marine Assurance Company, which Company had before then underwritten a certain policy on certain goods then being on board the said vessel, which said policy was then in full force and operation."

There were twenty other counts, stating the intention to be to prejudice the underwriters on other policies of insurance, some effected on goods, some on the vessel, some on freight.

At the trial it appeared that Alexander Howden and one Ainslie were the owners of one-fourth of the ship Dryad, and the prisoner, Michael, of the other three-fourths; that the goods which were put on board by Zulueta and Co., the charterers of the ship, were insured at Lloyd's, and the intent to prejudice the underwriters on that policy was alleged in one of the counts of the indictment, but that in the case of three different policies on goods specified therein, and which were effected by the prisoners themselves, no part of such goods was ever put on board.

It was further proved that the ship was wilfully sunk by Loose, the captain, on the high seas, near the island of St. Domingo, and that there was a total loss, except a very trifling salvage, both of the ship and the cargo on board; and the prisoners were found by the Jury—guilty of the whole charge in the indictment.

The counsel for the prisoners objected at the trial amongst other things, to the jurisdiction of the Court, and the attention of the learned Judges is called to the following clauses of the several Acts of Parliament, upon which the validity of those objections will be argued; the clauses are not set out here, but are merely referred to.

First.—The 9th section of the 7th George 4th, c. 64, relating to the indictment and trial of accessories before the fact.

Secondly.—The 22nd section of the 4th and 5th Will. 4, c. 36, giving the power to the Judges of the Central Criminal Court to hear and determine offences within the jurisdiction of the Admiralty.

Thirdly.—The 6th and 11th sections of the 1st Victoria, c. 89, the former of which describes the offence of casting away or destroying ships, and the latter the punishment of accessories before the fact to any felony punishable under that Act.

The objections made at the trial, were—

First.—That the indictment is not properly framed as an indictment for a *substantive offence* within the meaning of the statute 7 Geo. 4, c. 64, s. 9, but is an indictment at common law against the principal and accessory before the fact; and that, as the principal felon has not been convicted, the accessory before the fact cannot be tried or convicted upon it.

Secondly.—That, upon the proper construction of the statutes, this Court has no jurisdiction to try the offence of an accessory before the fact, in cases of felonies committed upon the high seas, unless where the principal felon himself has been committed to or detained in prison by this Court for such offence committed on the high seas.

Thirdly.—That as the statute, 1st Victoria, c. 89, s. 6, describes the felonious intent to be "to prejudice the persons who shall underwrite any policy of insurance upon goods *on board the ship*," no evidence was admissible, with respect to the three policies on goods effected by the prisoner, where, confessedly, no such goods were ever put on board.

Upon this case the opinion of the learned Judges is desired.

N. C. TINDAL.

April 20th, 1841.

COURT OF EXCHEQUER CHAMBER,

April 24, 1841.

THE QUEEN

Versus

PATRICK MAXWELL STEWART WALLACE,

and

MICHAEL SHAW STEWART WALLACE.

JUDGES PRESENT.

Queen's Bench.—Lord DENMAN, Lord Chief Justice.
Mr. Justice PATTESON,
Mr. Justice WILLIAMS,
Mr. Justice COLERIDGE,
Mr. Justice WIGHTMAN.

Common Pleas.—Lord Chief Justice TINDAL,
Mr. Justice BOSANQUET,
Mr. Justice COLTMAN,
Mr. Justice ERSKINE,
Mr. Justice MAULE.

Exchequer.—Lord ABINGER, Lord Chief Baron.
Mr. Baron GURNEY,
Mr. Baron ROLFE.

The Attorney General. In the case of the Queen against Wallace, my Lord, I have the honour to appear on behalf of the Crown in support of the conviction.

Lord Denman, C. J. Does any gentleman appear on behalf of the prisoners?

The Attorney General. I am informed, my Lord, that no counsel appears for the prisoners.

Lord Denman, C. J. If so, we will consider it among ourselves.

The Attorney General. Then, I understand your Lordship to intimate that it will be unnecessary for me to argue the case.

Lord Denman, C. J. Yes; if no gentleman is instructed to argue it on behalf of the prisoners.

The Attorney General. I believe that no gentleman is instructed my Lord.

Lord Denman, C. J. Then we will proceed first with those cases which are to be argued.

After some other business had been disposed of, Mr. Jervis entered the Court.

Mr. Jervis. My Lord, in the case of the Queen *v.* Wallace, which I understand was mentioned by my learned friend, the Attorney General, just now, I have made inquiry; and I find that I have no instructions to appear here.

The Attorney General. And, my Lord, I understand from my friend, that he is not aware that he is likely to be instructed.

Mr. Jervis. I know, my Lord, that no gentleman will be instructed to argue it.

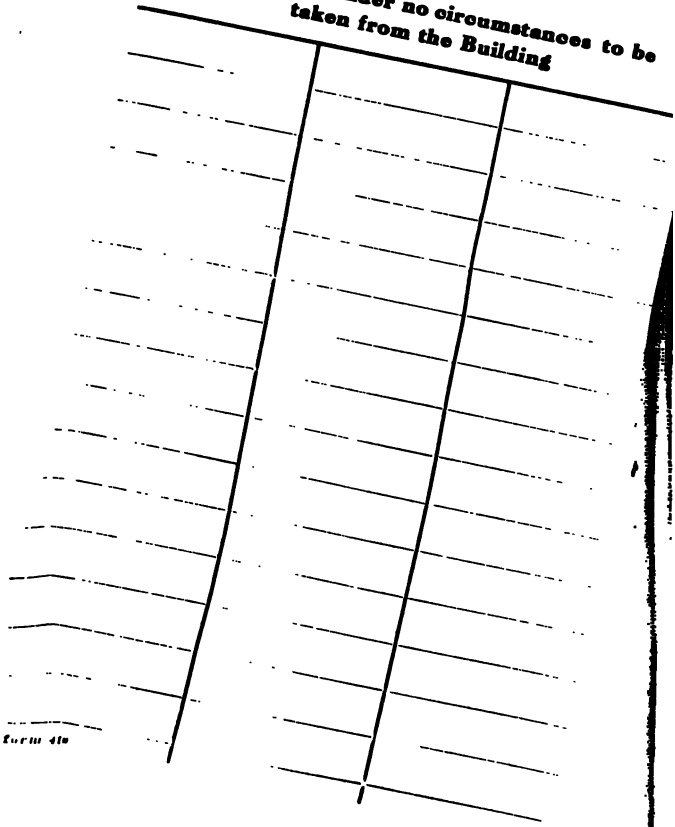
Lord Denman, C. J. Then, I believe it will not be necessary to trouble you, Mr. Attorney, as no counsel appears on the other side.

The Attorney General then retired.

On Saturday, the 1st day of May, 1841, the Judges again assembled in the Exchequer Chamber, and, after considering the points reserved by the case, *confirmed the conviction.*

THE NEW YORK PUBLIC LIBRARY
REFERENCE DEPARTMENT

This book is under no circumstances to be taken from the Building



Form 41a